

1 SEYFARTH SHAW LLP  
2 Dana L. Peterson (SBN 178499)  
dpeterson@seyfarth.com  
3 Pritee K. Thakarsey (SBN 266168)  
pthakarsey@seyfarth.com  
4 560 Mission Street, 31st Floor  
San Francisco, California 94105  
Telephone: (415) 397-2823  
5 Facsimile: (415) 397-8549

6 Attorneys for Defendant  
7 THE INTERPUBLIC GROUP OF COMPANIES, INC.  
& DRAFTFCB, INC.

ORIGINAL  
FILED

NOV 29 2012

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT,  
NORTHERN DISTRICT OF CALIFORNIA

8  
9  
10 BRENDAN McPHILLIPS, an individual,  
11 LEONARD SHARLET, an individual, JOHN  
12 BRUSHWOOD, an individual, and EVAN  
13 FRANCO, an individual,

14 Plaintiffs,

15 v.

16 THE INTERPUBLIC GROUP OF COMPANIES,  
17 INC., a Delaware Corporation; DRAFTFCB, INC.,  
a Delaware Corporation; and DOES 1 through 50,  
inclusive,

18 Defendants.

19  
C 12 6063  
Case No.

NOTICE TO UNITED STATES DISTRICT  
COURT AND TO PLAINTIFFS OF  
REMOVAL OF CIVIL ACTION TO THE  
UNITED STATES DISTRICT COURT

20 TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
21 CALIFORNIA AND TO PLAINTIFFS AND THEIR COUNSEL OF RECORD:

22 PLEASE TAKE NOTICE that The Interpublic Group of Companies, Inc. and Draftfc, Inc.  
23 (collectively "Defendants"), hereby remove the above-referenced action filed by Brendan McPhillips,  
Leonard Sharlet, John Brushwood, and Evan Franco ("Plaintiffs") from the Superior Court of the State  
24 of California for the County of San Francisco, to the United States District Court for the Northern  
25 District of California, pursuant to 28 U.S.C. sections 1441 and 1446, asserting original federal  
jurisdiction on the basis of diversity, codified in relevant part at 28 U.S.C. section 1332, and state that  
26 the removal is proper for the following reasons:  
27  
28

## **BACKGROUND**

1. This removal involves an action that was filed in the Superior Court of the State of California for the County of San Francisco, entitled *Brendan McPhillips, an individual, Leonard Sharlet, and individual, John Brushwood, and individual, and Evan Franco an individual v. The Interpublic Group of Companies, Inc., a Delaware Corporation, Draftfcb, Inc., a Delaware Corporation, and Does 1-25, inclusive*, Case No. CGG-12-524135. A true and correct copy of the Summons, Complaint, Civil Cover Sheet, Notice of Case Management Conference, Alternative Dispute Resolution Program Information Package, Summons on First Amended Complaint, and First Amended Complaint, in this action are attached hereto and incorporated by reference as Exhibit A. See Declaration of Dana Peterson (“Peterson Decl.”), ¶ 2. A true and correct copy of the written discovery requests served on Defendants (including Form Interrogatories - General, Form Interrogatories - Employment, Special Interrogatories, and Demand for Inspection and Production of Documents and Tangible Things) from all Plaintiffs, in this action are attached hereto and incorporated by reference as Exhibit B. See Peterson Decl., ¶ 3.

2. Plaintiffs filed their initial Complaint on September 12, 2012. See Peterson Decl., ¶ 2. Thereafter, Plaintiffs filed their First Amended Complaint on October 29, 2012. *Id.*

3. Defendant The Interpublic Group of Companies (Defendant “IPG”) was served with the Summons, Complaint, Civil Cover Sheet, Notice of Case Management Conference, Alternative Dispute Resolution Program Information Package, Summons on First Amended Complaint, and First Amended Complaint on November 2, 2012. *See* Peterson Decl., ¶ 2. Defendants filed an Answer to the First Amended Complaint on November 27, 2012, a true and correct copy of which is attached hereto and incorporated by reference as Exhibit C. *See* Peterson Decl., ¶ 4.

4. The presence of Doe defendants in this case has no bearing on diversity with respect to removal. "For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded." 28 U.S.C. § 1441(a).

## JURY DEMAND

5. Plaintiff demanded a jury trial. *See Exhibit A* ("First Amended Complaint").

**TIMELINESS OF REMOVAL**

6. This notice of removal is timely filed as it is filed less than one year from the date this  
 3 action was commenced and within thirty days of purported service upon Defendants. 28 U.S.C. §  
 4 1446(b); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 119 S. Ct. 1322 (1999) (thirty-day deadline  
 5 to remove commences upon service of the summons and complaint).

**PROCEEDINGS IN STATE COURT**

7. As of the date of this filing, there is a case management conference scheduled in San  
 8 Francisco County Superior Court for the state court action on February 13, 2013. Exhibits "A," "B" and  
 9 "C" attached hereto constitute all of the documents that have been served on Defendants and/or have  
 10 been filed by Defendants in the state court action prior to filing this Notice of Removal.

**DIVERSITY JURISDICTION**

12. This Court has original jurisdiction of this action under 28 U.S.C. section 1332(a)(1). As  
 13 set forth below, this action is removable pursuant section 28 U.S.C. section 1441(a) because the amount  
 14 in controversy is in excess of seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs,  
 15 and is between citizens of different states. Specifically, each Plaintiff seeks compensatory damages  
 16 (including loss of earnings and earnings capacity, double-damages on the First Cause of Action, and  
 17 mental and emotional distress damages), special damages, punitive damages, and attorney's fees and  
 18 costs. *See Exhibit A, First Amended Complaint.*

19. Plaintiffs' Citizenship. Plaintiffs are, and at the institution of this civil action, were  
 20 citizens of California. To establish citizenship for diversity purposes, a natural person must be both (a) a  
 21 citizen of the United States and (b) a domiciliary of one particular state. *Kantor v. Wellesley Galleries,*  
 22 *Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). Plaintiffs Brendan McPhillips, Leonard Sharlet, and John  
 23 Brushwood have been domiciled in California since on or before March 2011, when they began their  
 24 employments with Defendants. *See Exhibit A, First Amended Complaint, ¶¶ 3-5, 15-16.* Plaintiff Evan  
 25 Franco has been domiciled in California since on or before August 2011, when he began his  
 26 employment with Defendants. *See Exhibit A, First Amended Complaint, ¶¶ 6, 15, 17.* A party's  
 27 residence is prima facie evidence of his/her domicile. *State Farm Mut. Auto Ins. Co. v. Dyer*, 19 F.3d  
 28 514, 520 (10th Cir. 1994).

10. Defendants' Citizenships. Pursuant to 28 U.S.C. section 1332(c)(1), "a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business." Defendants IPG and Draftfcb, are now, and ever since this action commenced have been, incorporated under the laws of the State of Delaware. *See Exhibit A, First Amended Complaint ¶ 7; Declaration of Eileen McCarthy ("McCarthy Decl."), ¶ 2, 5; Declaration of Illeana H. Kutler ("Kutler Decl."), ¶ 3.* Defendants IPG and Draftfcb principal places of business are in New York, New York. *See McCarthy Decl., ¶ 2, 5; Kutler Decl., ¶ 3.*

11. Defendants IPG and Draftfcb's principal places of business are New York, New York because the appropriate test to determine a corporation's principal place of business is the "nerve center" test. *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192 (2010). Under the "nerve center" test, the principal place of business is the state where the "corporation's officers direct, control, and coordinate the corporation's activities" and where the corporation maintains its headquarters. *Id.* Since New York is the site of Defendants corporate headquarters and executive offices, and the state in which Defendants high level officers direct, control, and coordinate Defendants' activities, Defendants "nerve center" is in New York. Accordingly, Defendants IPG and Draftfcb are, and have been at all times since this action commenced, citizens of New York.

## **AMOUNT IN CONTROVERSY**

12. While Defendants deny any liability as to Plaintiffs claims, the amounts in controversy requirement is satisfied because, based on a preponderance of the evidence, the amounts in controversy in this action, exclusive of interest and costs, exceeds the sum of \$75,000.00 based on the allegations, claims, and prayer for relief set forth in the First Amended Complaint.

13. In this case, Plaintiffs do not allege the amounts in controversy. An action may be removed if the defendant establishes, by a preponderance of the evidence that the amount in controversy exceeds the jurisdictional amount. *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir. 2007). To establish by a preponderance of the evidence that the amount in controversy exceeds the jurisdictional amount, the defendant must provide evidence establishing that it is “more likely than not” that the amount in controversy exceeds that amount. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996). If two or more plaintiffs have separate and distinct demands in a single suit,

1 then each plaintiff's claims must meet the requisite jurisdictional amount. *Pinel v. Pinel*, 36 S. Ct. 416,  
 2 417 (1916).

3       14. In determining the amount in controversy, the Court must consider the aggregate of  
 4 general damages, special damages, punitive damages, and attorneys' fees. *Galt G/S v. JSS Scandinavia*,  
 5 142 F.3d 1150, 1156 (9th Cir. 1998) (claims for statutory attorneys' fees to be included in amount in  
 6 controversy, regardless of whether such an award is discretionary or mandatory); *Davenport v. Mutual*  
 7 *Benefit Health & Accident Ass'n*, 325 F.2d 785, 787 (9th Cir. 1963) (punitive damages must be taken  
 8 into account where recoverable under state law); *Conrad Assoc.'s v. Hartford Accident & Ind. Co.*, 994  
 9 F. Supp. 1196, 1198 (N.D. Cal. 1998) ("amount in controversy" includes claims for general and special  
 10 damages).

11       15. Plaintiffs are seeking loss of earnings and earning capacity since their terminations on  
 12 October 2011. For their First Cause of Action, Plaintiffs are seeking "double-damages" under California  
 13 Labor Code section 972. *Id.*, ¶ 28. Plaintiffs allege that Defendants promised continued employment  
 14 "through the end of 2012." *See* Exhibit A, First Amended Complaint, ¶ 14. Plaintiff Brendan  
 15 McPhillips' yearly compensation as of March 28, 2011 was \$45,000, Plaintiffs Leonard Sharlet and  
 16 John Brushwood's yearly compensation as of March 28, 2011 was \$50,000, and Plaintiff Evan Franco's  
 17 yearly compensation as of August 10, 2011 was \$50,000. *See* McCarthy Decl., ¶ 3, 4. Accordingly,  
 18 given their annual salaries and their claim for more than one year of wage loss, times two (double-  
 19 damages), the amount of damages that each Plaintiff individually seeks exceeds \$75,000.00 each even  
 20 before factoring in attorneys' fees and emotional distress damages.

21       16. Plaintiffs are also seeking mental and emotional distress damages, and punitive damages  
 22 under California Civil Code section 3294. *See*, Exhibit A, First Amended Complaint, ¶¶ 29, 30, 40, 63,  
 23 64.

24       17. Requests for attorney's fees must be considered in ascertaining the amount in  
 25 controversy. *See Galt*, 142 F.3d at 1156 (claims for statutory attorney's fees to be included in amount in  
 26 controversy, regardless of whether award is discretionary or mandatory). Plaintiffs claim a right to  
 27 attorneys' fees under California's Private Attorney General Act of 2004. *See* Exhibit A, First Amended  
 28

1 Complaint, ¶ 68 and prayer for judgment, number 6. If successful at trial, each would be entitled to an  
2 award of attorneys' fees that itself would likely exceed \$75,000.00.

3 18. For each of the foregoing reasons, while Defendants deny any liability as to Plaintiffs'  
4 claims, it is now "more likely than not" that the amount in controversy exceeds \$75,000.00, exclusive of  
5 interest and costs, as required by 28 U.S.C. section 1332(a).

6 **VENUE**

7 20. Venue lies in this Court pursuant to 28 U.S.C. section 1441(a), as this action originally  
8 was brought in the Superior Court of the State of California, County of San Francisco.

9 **CONSENT TO REMOVAL**

10 21. Defendants, IPG and Draftfcb, are all jointly represented by Seyfarth Shaw, LLP and  
11 have consented to removal. *See* Peterson Decl. ¶ 5.

12 **NOTICE OF REMOVAL**

13 22. Notice of this notice of removal will promptly be served on Plaintiffs and the Clerk of the  
14 Superior Court of the State of California in and for the County of San Francisco.

15 WHEREFORE, Defendants pray that this civil action be removed from the Superior Court of the  
16 State of California, County of San Francisco to the United States District Court for the Northern District  
17 of California.

19 DATED: November 29, 2012

Respectfully submitted,

20 SEYFARTH SHAW LLP

22 By:

Dana L. Peterson  
Pritee K. Thakarsey  
Attorneys for Defendant  
THE INTERPUBLIC GROUP OF COMPANIES,  
INC. & DRAFTFCB, INC.

**EXHIBIT A**

**SUMMONS  
(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT: THE INTERPUBLIC GROUP OF  
(AVISO AL DEMANDADO): COMPANIES, INC., a Delaware Corporation;  
DRAFTFCB, INC., a Delaware Corporation; and DOES 1 through 50,  
inclusive.**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**YOU ARE BEING SUED BY PLAINTIFF: BRENDAN McPHILLIPS, an  
(LO ESTÁ DEMANDANDO EL DEMANDANTE); individual, LEONARD  
SHARLET, an individual, JOHN BRUSHWOOD, an individual, and  
EVAN FRANCO, an individual.**

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/seithelp](http://www.courtinfo.ca.gov/seithelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/seithelp](http://www.courtinfo.ca.gov/seithelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

*AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda deschar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):  
San Francisco County Superior Court  
400 McAllister Street  
400 McAllister Street  
San Francisco, California 94102

CASE NUMBER: 12-524135  
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
David M. deRubertis (SBN 208709) 818.761.2322 818.761.2323

The deRubertis Law Firm, PLC  
4219 Coldwater Canyon Avenue CLERK OF THE COURT  
Studio City, California 91604

D. STEPPE

DATE: September 11, 2012

Clerk, by \_\_\_\_\_  
(Secretario)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED: You are served**

, Deputy  
(Adjunto)

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify):

under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
other (specify):

4.  by personal delivery on (date):



1 David M. deRubertis, State Bar No. 208709  
2 Tyler F. Clark, State Bar No. 258309  
3 The deRubertis Law Firm, PLC  
4 4219 Coldwater Canyon Avenue  
5 Studio City, California 91604  
6 Telephone: (818) 761-2322  
7 Facsimile: (818) 761-2323  
8 E-Mail: [David@deRubertisLaw.com](mailto:David@deRubertisLaw.com)  
9 E-Mail: [Tyler@deRubertisLaw.com](mailto:Tyler@deRubertisLaw.com)

10 Attorneys for Plaintiffs  
11 Brendan McPhillips, Leonard Sharlet,  
12 John Brushwood and Evan Franco

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 FOR THE COUNTY OF SAN FRANCISCO

15 BRENDAN McPHILLIPS, an individual,  
16 LEONARD SHARLET, an individual,  
17 JOHN BRUSHWOOD, an individual, and  
18 EVAN FRANCO, an individual,

19 Plaintiffs,

20 v.

21 THE INTERPUBLIC GROUP OF  
22 COMPANIES, INC., a Delaware Corporation;  
23 DRAFTFCB, INC., a Delaware Corporation;  
24 and DOES 1 through 50, inclusive,

25 Defendants.

26 Case No.: G C - 12 - 524135

27 COMPLAINT FOR:

- 28 (1) Solicitation of Employee by  
Misrepresentation (Labor Code §970);  
(2) Fraud and Deceit;  
(3) Negligent Misrepresentation;  
(4) Promissory Estoppel;  
(5) Breach of Oral Contract; and  
(6) Wrongful Termination in Violation of  
Public Policy.

29 JURY TRIAL DEMAND

30 Plaintiffs, BRENDAN McPHILLIPS, LEONARD SHARLET, JOHN BRUSHWOOD, and  
31 EVAN FRANCO, as individuals, hereby allege against Defendants, THE INTERPUBLIC GROUP  
32 OF COMPANIES, INC., DRAFTFCB, INC.; and DOES 1 through 50, inclusive, as follows:

33 GENERAL ALLEGATIONS

34 1. The true names, identities, or capacities whether individual, corporate, associate, or  
35 otherwise, of Defendants, DOES 1 through 50, inclusive, are unknown to the Plaintiffs, who  
36 therefore sue said Defendants by such fictitious names. When the true names, identities or  
37 capacities of such fictitiously designated Defendants are ascertained, Plaintiffs will ask leave of  
38

FILED  
Superior Court of California  
County of San Francisco

SEP 12 2012

CLERK OF THE COURT  
By: *[Signature]* Deputy Clerk

SUMMONS ISSUED

1 this Court to amend this Complaint and to insert said true names, identities, and capacities,  
2 together with the proper charging allegations.

3       2. Plaintiffs are informed and believe and thereon allege that each of the Defendants  
4 sued herein as a DOE is responsible in some manner and liable herein for negligent, wanton,  
5 reckless, and tortuous conduct, strict liability, and by such wrongful conduct, proximately caused  
6 the Plaintiffs' injuries and damages.

7       3. At relevant times mentioned herein, Plaintiff, BRENDAN McPHILLIPS, was  
8 employed by Defendants and worked in Visalia, California and the surrounding areas.

9       4. At relevant times mentioned herein, Plaintiff, LEONARD SHARLET, was  
10 employed by Defendants and worked for Defendants in Visalia, California and the surrounding  
11 areas.

12       5. At relevant times mentioned herein, Plaintiff, JOHN BRUSHWOOD, was  
13 employed by Defendants and worked for Defendants in San Francisco, California and the  
14 surrounding areas.

15       6. At relevant times mentioned herein, Plaintiff, EVAN FRANCO, was employed  
16 by Defendants and worked for Defendants in Santa Ana, California and the surrounding areas.

17       7. Defendants THE INTERPUBLIC GROUP OF COMPANIES, INC., DRAFTFCB,  
18 INC. and DOES 1 through 25, inclusive, were corporations, associations, partnerships, contractors,  
19 joint ventures, or other business entities, organized and existing under the laws of the State of  
20 Delaware and at all times herein mentioned conducted business in the State of California, and  
21 made promises and/or representations that give rise to this lawsuit including in the County of San  
22 Francisco. Defendants DOES 26 through 50 were individuals who were the agents, employees,  
23 supervisors, members, volunteers, servants, partners, representatives, independent contractors,  
24 joint venturers or other participants with or of Defendants THE INTERPUBLIC GROUP OF  
25 COMPANIES, INC., DRAFTFCB, INC. and DOES 1 through 25, and in doing the things  
26 hereinafter mentioned, were acting within the course and scope of said agency, employment,  
27 membership or other relationship with said Defendants.

28

1       8. Plaintiffs are informed, and believe, and thereon allege that, at all times relevant,  
2 each of the Defendants was acting as an agent, joint venturer, joint employer, co-employer,  
3 integrated enterprise, parent/subsidiary, and/or alter ego for each of the other Defendants and each  
4 were co-conspirators with respect to the acts and the wrongful conduct alleged herein such that  
5 each is responsible for the acts of the other.

6       9. Likewise, Plaintiffs are further informed, and believe and thereon allege that  
7 Defendant THE INTERPUBLIC GROUP OF COMPANIES, INC., exercised sufficient control  
8 over Defendant DRAFTFCB, INC. and over the terms and conditions of Plaintiffs' employment  
9 with Defendant DRAFTFCB, INC. so as to be an "employer" under the law and subject to liability  
10 for the wrongful conduct alleged herein on that basis.

11      10. At all times herein mentioned, Defendants, whether or not specifically identified or  
12 designated herein as a DOE, and each of them, were the agents, employees, servants, partners,  
13 independent contractors, joint venturers and participants with all other Defendants, and with each  
14 other, and in doing the things hereinafter mentioned, were agents, employees, servants, partners,  
15 joint venturers, and with the consent and permission of the co-Defendants, and each of them.

16      11. Plaintiffs name said Defendants herein, and each of them, because Plaintiffs are in  
17 doubt and does not know exactly from which of the said Defendants Plaintiffs are entitled to  
18 redress in light of the fact that the injuries and damages to Plaintiffs herein alleged were caused by  
19 the combined negligence of all of the Defendants, or one or more of them. For that reason,  
20 Plaintiffs name all of the said Defendants, and asks that the Court determine the liability of each  
21 and all of the said Defendants in this action and to what extent and what responsibility falls upon  
22 each of said Defendants, and that the Court award judgment to Plaintiffs as against such or all  
23 Defendants, either jointly or separately, as may be found liable.

24

#### 25           FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

26      12. On or about October 14, 2010 the California Public Utilities Commission  
27 ("CPUC") unveiled Engage 360, a new brand name and web portal for statewide use to increase  
28 consumer awareness of and participation in energy-saving activities. The brand was launched in

1      September 2010 via a \$60 million investor-owned utility Statewide Marketing, Education &  
2      Outreach 2010-2012 energy efficiency program implemented by DRAFTFCB, INC.

3            13. In early 2011, Defendants began recruiting Plaintiffs Brendan McPhillips, Leonard  
4      Sharlet and John Brushwood for positions as Assistant Community Managers. In or around July  
5      2011, Defendants began recruiting Plaintiff Evan Franco for the same position. All the positions  
6      were located throughout California, including in San Francisco, Visalia and Santa Ana.

7            14. During the hiring process, Defendants affirmatively represented to each Plaintiff  
8      that Engage 360 was fully funded through at least the end of 2012 and, therefore, the positions  
9      Plaintiffs were offered and being hired into were fully funded through the end of 2012. Plaintiffs  
10     were also provided literature stating the same. This was a major selling point to Plaintiffs.

11           15. Based on the Defendants' representations that their positions and the program was  
12     fully funded through the end of 2012, Plaintiffs changed their residences and in some cases moved  
13     their lives across the country and turned down other job opportunities to accept employment with  
14     Defendants.

15           16. On or about March 28, 2011, Plaintiffs Brendan McPhillips, Leonard Sharlet and  
16     John Brushwood began their employment with Defendants.

17           17. On or about August 11, 2011, Plaintiff Evan Franco began his employment with  
18     Defendants.

19           18. In or about October 2011, Plaintiffs were called into meetings and informed that  
20     each of them were being laid off. Defendants then explained to Plaintiffs that the project no longer  
21     had funding – a fact contrary to the express promise of a fully funded program through the  
22     conclusion of 2012 made at in the hiring process to recruit Plaintiffs to accept employment.

23  
24           **FACTS RELEVANT TO PRIVATE ATTORNEY GENERAL ACT CLAIMS**

25           19. Plaintiffs bring a portion of this lawsuit on behalf of themselves and all other  
26     aggrieved employees who suffered from the violations alleged herein under the Labor Code  
27     Private Attorney General Act of 2004 (Cal. Labor Code §2698, et seq.).  
28

1       20. Plaintiffs, BRENDAN MCPHILLIPS, LEONARD SHARLET, JOHN  
2 BRUSHWOOD and EVAN FRANCO have given written notice to Defendants the  
3 INTERPUBLIC GROUP OF COMPANIES, INC. and DRAFTFCB, INC. and the California  
4 Labor and Workforce Development Agency (LWDA) by letters specifying the Labor Codes  
5 violated and describing the facts and theories to support the particular violations. Plaintiffs gave a  
6 written notice on or about September 10, 2012.

7       21. Plaintiffs intend to amend their complaint to include remedies under the Private  
8 Attorney General Act of 2004 if the LWDA either: (1) informs Plaintiffs of its intent not to  
9 investigate their claims or (2) fails to inform Plaintiffs of its intent to investigate their claims  
10 within thirty-three (33) days from September 10, 2012.

11

12                   **FIRST CAUSE OF ACTION FOR SOLICITATION OF AN**  
13                   **EMPLOYEE BY MISREPRESENTATION (LABOR CODE §970)**  
14                   **AGAINST ALL DEFENDANTS**

15       22. Plaintiffs restate and incorporate by reference each and every allegation contained  
16 in paragraphs 1 through 21, inclusive, as though fully set forth herein.

17       23. Defendants made representations to Plaintiffs regarding the kind, character, or  
18 existence of work and/or the length of time the work would last.

19       24. Defendants representations were not true.

20       25. Defendants knew when the representations were made that they were not true.

21       26. Defendants intended that Plaintiffs rely on the representations.

22       27. Plaintiffs reasonably relied on Defendants' representations and changed their  
23 residences for the purpose of working for Defendants.

24       28. As a direct and foreseeable result of the aforesaid acts of said Defendants, Plaintiffs  
25 have lost and will continue to lose income, benefits, and other damages in an amount to be proven  
26 at the time of trial. Plaintiffs claim such amount as damages together with pre-judgment interest  
27 pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-judgment  
28

1 interest. Under Labor Code section 972, Plaintiffs are entitled to "double damages" resulting from  
2 the misrepresentations.

3           29. As a result of the aforesaid acts of Defendants, Plaintiffs claim general damages for  
4 mental and emotional distress and aggravation in an amount to be proven at the time of trial.

5           30. The above described acts of Defendants, by and through their managing agents,  
6 officers or directors, were engaged in with a deliberate, cold, callous, fraudulent and intentional  
7 manner in order to injure and damage Plaintiffs and/or with a conscious disregard of Plaintiffs and  
8 their rights. Such acts were despicable, and constitute malice, fraud and/or oppression within the  
9 meaning of Civil Code section 3294. Plaintiffs request an assessment of punitive damages against  
10 Defendants, in an amount to be proven at time of trial.

11        31. As a proximate result of the foregoing conduct, which violated the provisions of  
12 Labor Code section 970 , Plaintiffs have been forced to and will incur attorney's fees and costs in  
13 the prosecution of this claim, in an amount to be proved at trial. Plaintiffs are in the process of  
14 exhausting their administrative remedies under the Labor Code Private Attorney Generals Act of  
15 2004 (Labor Code section 2698, et seq.) as indicated herein, and will amend this Complaint upon  
16 exhaustion to plead all rights and remedies available under this Act, including the recovery of  
17 attorney's fees for a proven violation of Labor Code section 970.

21           32. Plaintiffs restate and incorporate by reference each and every allegation contained  
22 in paragraphs 1 through 31, inclusive, as though fully set forth herein.

33. Defendants represented to Plaintiffs that an important fact was true, or that  
34 Defendants intentionally failed to disclose an important fact to Plaintiffs, or that Defendants  
35 disclosed some facts to Plaintiffs but intentionally failed to disclose other important facts, making  
36 the disclosure deceptive, or that Defendants intentionally failed to disclose an important fact that  
37 was known only to it and that Plaintiffs could not have discovered.

34. Defendants representations were false, and/or Plaintiffs were unaware of those material facts concealed by Defendants.

35. Defendants knew that the representations were false when they were made, or that Defendants made the representations recklessly and without regard for its truth. Moreover, Defendants knew that the concealed facts were material to Plaintiffs' decisions, yet failed to disclose them.

36. Defendants intended that Plaintiffs rely on Defendants' representations, or that Defendants intended to deceive Plaintiffs by concealing the material facts.

37. Plaintiffs reasonably relied on Defendants' representations and/or deception.

10       38. As a direct and foreseeable result of the aforesaid acts of said Defendants, Plaintiffs  
11 have lost and will continue to lose income, benefits, and other damages in an amount to be proven  
12 at the time of trial. Plaintiffs claim such amount as damages together with pre-judgment interest  
13 pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-judgment  
14 interest.

15       39. As a result of the aforesaid acts of Defendants, Plaintiffs claim general damages for  
16 mental and emotional distress and aggravation in an amount to be proven at the time of trial.

17       40. The above described acts of Defendants, by and through their managing agents,  
18 officers or directors, were engaged in with a deliberate, cold, callous, fraudulent and intentional  
19 manner in order to injure and damage Plaintiffs and/or with a conscious disregard of Plaintiffs and  
20 their rights. Such acts were despicable, and constitute malice, fraud and/or oppression within the  
21 meaning of Civil Code section 3294. Plaintiffs request an assessment of punitive damages against  
22 Defendants, in an amount to be proven at time of trial.

**THIRD CAUSE OF ACTION FOR NEGLIGENT  
MISREPRESENTATION AGAINST ALL DEFENDANTS**

26 41. Plaintiffs restate and incorporate by reference each and every allegation contained  
27 in paragraphs 1 through 40, inclusive, as though fully set forth herein.

28 42. Defendants represented to Plaintiffs that important facts were true.

- 1       43. Defendants representations were not true.  
2       44. Defendants had no reasonable grounds for believing that its representations were  
3 true when they were made.  
4       45. Defendants intended that Plaintiffs rely on the representations.  
5       46. Plaintiffs reasonably relied on Defendants' representations.  
6       47. As a direct and foreseeable result of the aforesaid acts of said Defendants, Plaintiffs  
7 have lost and will continue to lose income, benefits, and other damages in an amount to be proven  
8 at the time of trial. Plaintiffs claim such amount as damages together with pre-judgment interest  
9 pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-judgment  
10 interest.  
11      48. As a result of the aforesaid acts of Defendants, Plaintiffs claim general damages for  
12 mental and emotional distress and aggravation in an amount to be proven at the time of trial.

13

14                          **FOURTH CAUSE FOR PROMISSORY ESTOPPEL**  
15                          **AGAINST ALL DEFENDANTS**

- 16      49. Plaintiffs restate and incorporate by reference each and every allegation contained  
17 in paragraphs 1 through 48, inclusive, as though fully set forth herein.  
18      50. Defendants made promises to Plaintiffs.  
19      51. Plaintiffs relied on the promises made by Defendants to their detriment.  
20      52. As a direct and foreseeable result of the aforesaid acts of said Defendants, Plaintiffs  
21 have lost and will continue to lose income, benefits, and other damages in an amount to be proven  
22 at the time of trial. Plaintiffs claim such amount as damages together with pre-judgment interest  
23 pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-judgment  
24 interest.

25

26

27

28

1                   **FIFTH CAUSE OF ACTION FOR BREACH OF ORAL**  
2                   **CONTRACT AGAINST ALL DEFENDANTS**

3       53. Plaintiffs restate and incorporate by reference each and every allegation contained  
4       in paragraphs 1 through 52, inclusive, as though fully set forth herein.

5       54. Plaintiffs and Defendants entered into a contract.

6       55. Plaintiffs did all, or substantially all, of the significant things that the contract  
7       required them to do, or that Plaintiffs were excused from doing those things.

8       56. All of the conditions required by the contract for Defendants' performance had  
9       occurred or were excused.

10      57. Defendants failed to do something that the contract required it to do, or that  
11     Defendant did something that the contract prohibited it from doing.

12      58. As a direct and foreseeable result of the aforesaid acts of said Defendants, Plaintiffs  
13     have lost and will continue to lose income, benefits, and other damages in an amount to be proven  
14     at the time of trial. Plaintiffs claim such amount as damages together with pre-judgment interest  
15     pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-judgment  
16     interest.

17                   **SIXTH CAUSE OF ACTION FOR WRONGFUL TERMINATION IN**  
18                   **VIOLATION OF PUBLIC POLICY AGAINST ALL DEFENDANTS**

19      59. Plaintiffs restate and incorporate by reference each and every allegation contained  
20     in paragraphs 1 through 58, inclusive, as though fully set forth herein.

21      60. Defendants discharged Plaintiffs.

22      61. As set forth above, said actions by Defendants were wrongful and in violation of  
23     the fundamental principles of the public policy of the State of California as reflected in its laws,  
24     objectives and policies. Said laws, which establish these fundamental public policies include,  
25     without limitation: California Labor Code sections 970 and 971; and the California Constitution.

26      62. As a direct and foreseeable result of the aforesaid acts of said Defendants, Plaintiffs  
27     have lost and will continue to lose income, benefits, and other damages in an amount to be proven

1 at the time of trial. Plaintiffs claim such amount as damages together with pre-judgment interest  
2 pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-judgment  
3 interest.

4 63. As a result of the aforesaid acts of Defendants, Plaintiffs claim general damages for  
5 mental and emotional distress and aggravation in an amount to be proven at the time of trial.

6 64. The above described acts of Defendants, by and through their managing agents,  
7 officers or directors, were engaged in with a deliberate, cold, callous, fraudulent and intentional  
8 manner in order to injure and damage Plaintiffs and/or with a conscious disregard of Plaintiffs and  
9 their rights. Such acts were despicable, and constitute malice, fraud and/or oppression within the  
10 meaning of Civil Code section 3294. Plaintiffs request an assessment of punitive damages against  
11 Defendants, in an amount to be proven at time of trial.

12

13 WHEREFORE, Plaintiffs pray judgment against the Defendants, and each of them, as  
14 follows:

- 15 1. For general and special damages according to proof;  
16 2. For loss of earnings and earning capacity and/or other economic damages,  
17 according to proof, including double-damages on the First Cause of Action;  
18 3. For pre-judgment interest to the extent allowed by law;  
19 4. For costs of suit incurred herein;  
20 5. For punitive and/or exemplary damages in an amount to punish Defendants;  
21 6. For attorney's fees in prosecuting this action on the First Cause of Action (after  
22 amendment to include remedies under the Labor Code Private Attorneys General Act of 2004);  
23 and

24 ///

25 ///

26 //

27 ///

28 ///

1           7. For such other and further relief as the Court deems just and proper.  
2  
3           DATED: September 11, 2012                                  The deRubertis Law Firm, PLC  
4  
5           By   
6           David M. deRubertis, Esq.  
7           Tyler F. Clark, Esq.  
8           Attorneys for Plaintiffs  
9           Brendan McPhillips, Leonard Sharlet,  
10           John Brushwood, and Evan Franco  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1                           **DEMAND FOR JURY TRIAL**

2                           Plaintiff hereby demands trial by jury on all issues so triable in the Complaint.

3                           DATED: September 11, 2012

4                           The deRubertis Law Firm, PLC

5                           By 

6                           David M. deRubertis, Esq.

7                           Tyler F. Clark, Esq.

8                           Attorneys for Plaintiffs

9                           Brendan McPhillips, Leonard Sharlet,

10                          John Brushwood, and Evan Franco

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>David M. deRubertis (SBN 208709)</b> <b>Tyler F. Clark (SBN 258309)</b> <b>The deRubertis Law Firm, PLC</b> <b>4219 Coldwater Canyon Avenue</b> <b>Studio City, California 91604</b> <b>TELEPHONE NO. 818.761.2322</b> <b>FAX NO. 818.761.2323</b> <b>ATTORNEY FOR (Name): Plaintiffs Brendan McPhillips, et al.</b>		CM-010 FOR COURT USE ONLY  <b>FILED</b> <b>Superior Court of California</b> <b>County of San Francisco</b> <b>SEP 12 2012</b> <b>CLERK OF THE COURT</b> By: <i>[Signature]</i> Deputy Clerk  <b>CGC-12-564135</b>
SUPERIOR COURT OF CALIFORNIA COUNTY OF San Francisco STREET ADDRESS: 400 McAlister Street MAILING ADDRESS: 400 McAlister Street CITY AND ZIP CODE: San Francisco, California 94102 BRANCH NAME: Civic Center Courthouse		
CASE NAME: BRENDAN McPHILLIPS, et al. v. THE INTERPUBLIC GROUP OF COMPANIES, INC., et al.		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> Unlimited <input type="checkbox"/> Limited (Amount demanded exceeds \$25,000)      (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)  JUDGE: DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Auto Tort	<input type="checkbox"/> Breach of contract/warranty (06)	<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Auto (22)	<input type="checkbox"/> Rule 3.740 collections (09)	<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Uninsured motorist (46)	<input type="checkbox"/> Other collections (09)	<input type="checkbox"/> Mass tort (40)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort		
<input type="checkbox"/> Asbestos (04)	<input type="checkbox"/> Insurance coverage (18)	<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Product liability (24)	<input type="checkbox"/> Other contract (37)	<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Medical malpractice (45)	<input type="checkbox"/> Real Property	<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
<input type="checkbox"/> Other PI/PD/WD (23)	<input type="checkbox"/> Eminent domain/inverse condemnation (14)	
Non-PI/PD/WD (Other) Tort		
<input type="checkbox"/> Business tort/unfair business practice (07)	<input type="checkbox"/> Wrongful eviction (33)	<input type="checkbox"/> Enforcement of Judgment
<input type="checkbox"/> Civil rights (08)	<input type="checkbox"/> Other real property (26)	<input type="checkbox"/> Enforcement of judgment (20)
<input type="checkbox"/> Defamation (13)	<input type="checkbox"/> Unlawful Detainer	<input type="checkbox"/> Miscellaneous Civil Complaint
<input type="checkbox"/> Fraud (16)	<input type="checkbox"/> Commercial (31)	<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Intellectual property (19)	<input type="checkbox"/> Residential (32)	<input type="checkbox"/> Other complaint (not specified above) (42)
<input type="checkbox"/> Professional negligence (25)	<input type="checkbox"/> Drugs (38)	<input type="checkbox"/> Miscellaneous Civil Petition
<input type="checkbox"/> Other non-PI/PD/WD tort (35)	<input type="checkbox"/> Judicial Review	<input type="checkbox"/> Partnership and corporate governance (21)
Employment		
<input type="checkbox"/> Wrongful termination (36)	<input type="checkbox"/> Asset forfeiture (05)	<input type="checkbox"/> Other petition (not specified above) (43)
<input checked="" type="checkbox"/> Other employment (15)	<input type="checkbox"/> Petition re: arbitration award (11)	
	<input type="checkbox"/> Writ of mandate (02)	
	<input type="checkbox"/> Other judicial review (39)	

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a.  Large number of separately represented parties
  - b.  Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
  - c.  Substantial amount of documentary evidence
  - d.  Large number of witnesses
  - e.  Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
  - f.  Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive
4. Number of causes of action (specify): (8) Eight
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: September 11, 2012  
David M. deRubertis (SBN 208709)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

**INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET****CM-010**

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collection case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in Items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

**CASE TYPES AND EXAMPLES**

<b>Auto Tort</b>	<b>Contract</b>	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)</b>
Auto (22)—Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06) Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)	Antitrust/Trade Regulation (03) Construction Defect (10) Claims Involving Mass Tort (40) Securities Litigation (28) Environmental/Toxic Tort (30) Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)	Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence) Negligent Breach of Contract/Warranty	
<b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b>	Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09) Collection Case—Seller Plaintiff Other Promissory Note/Collections Case	<b>Enforcement of Judgment</b>
Asbestos (04) Asbestos Property Damage Asbestos Personal Injury/ Wrongful Death	Insurance Coverage (not provisionally complex) (18) Auto Subrogation Other Coverage	Enforcement of Judgment (20) Abstract of Judgment (Out of County) Confession of Judgment (non-domestic relations) Sister State Judgment Administrative Agency Award (not unpaid taxes) Petition/Certification of Entry of Judgment on Unpaid Taxes Other Enforcement of Judgment Case
Product Liability (not asbestos or toxic/environmental) (24)	Other Contract (37) Contractual Fraud Other Contract Dispute	
Medical Malpractice (45) Medical Malpractice— Physicians & Surgeons	<b>Real Property</b>	<b>Miscellaneous Civil Complaint</b>
Other Professional Health Care Malpractice	Eminent Domain/Inverse Condemnation (14) Wrongful Eviction (33)	RICO (27) Other Complaint (not specified above) (42)
Other PI/PD/WD (23); Premises Liability (e.g., slip and fall)	Other Real Property (e.g., quiet title) (26) Writ of Possession of Real Property Mortgage Foreclosure Quiet Title Other Real Property (not eminent domain, landlord/tenant, or foreclosure)	Declaratory Relief Only Injunctive Relief Only (non-harassment) Mechanics Lien
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	<b>Unlawful Detainer</b>	Other Commercial Complaint Case (non-tort/non-complex) Other Civil Complaint (non-tort/non-complex)
Intentional Infliction of Emotional Distress	Commercial (31) Residential (32)	<b>Miscellaneous Civil Petition</b>
Negligent Infliction of Emotional Distress	Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)	Partnership and Corporate Governance (21)
Other PI/PD/WD	Judicial Review	Other Petition (not specified above) (43)
<b>Non-PI/PD/WD (Other) Tort</b>	Asset Forfeiture (05) Petition Re: Arbitration Award (11)	Civil Harassment Workplace Violence
Business Tort/Unfair Business Practice (07)	Writ of Mandate (02) Writ—Administrative Mandamus Writ—Mandamus on Limited Court Case Matter	Elder/Dependent Adult Abuse
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)	Writ—Other Limited Court Case Review	Election Contest
Defamation (e.g., slander, libel) (13)	Other Judicial Review (39) Review of Health Officer Order	Petition for Name Change
Fraud (16)	Notice of Appeal—Labor Commissioner Appeals	Petition for Relief from Late Claim
Intellectual Property (19)		Other Civil Petition
Professional Negligence (25)		
Legal Malpractice		
Other Professional Malpractice (not medical or legal)		
Other Non-PI/PD/WD Tort (35)		
<b>Employment</b>		
Wrongful Termination (36)		
Other Employment (15)		

CASE NUMBER: CGC-12-524135 BRENDAN MC PHILLIPS et al VS. THE INTERPUBLIC GRO

**NOTICE TO PLAINTIFF**

A Case Management Conference is set for:

**DATE:** FEB-13-2013  
**TIME:** 10:30AM  
**PLACE:** Department 610  
400 McAllister Street  
San Francisco, CA 94102-3680

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order without an appearance at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

**ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS**

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A TRIAL.  
(SEE LOCAL RULE 4)

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

Superior Court Alternative Dispute Resolution Coordinator  
400 McAllister Street, Room 103  
San Francisco, CA 94102  
(415) 551-3876

See Local Rules 3.3, 6.0 C and 10 B re stipulation to judge pro tem.

**EXPERIENCED MEDIATORS ARE  
AVAILABLE IN THE FOLLOWING AREAS**

"This was the third attempt to mediate this case, and the BASF mediator was far and away the best mediator. I dare say that we would not have settled today but for his efforts."

George Yihen, Esq.  
Ortak, Herting & Siedle LLP

"We had an excellent experience and, after 8½ hours of mediation, [the BASF mediator] settled a very difficult case involving claims against four clients of ours by a wealthy investor who claimed inadequate disclosure was made."

Robert Charles Fries, Esq.  
Sherman Fries LLP

"When the other side made their offer, I thought there was no way we would reach an agreement – we were too far apart, but the mediator brought us together. He saved me a lot of time and aggravation by facilitating a settlement. Thanks!"

Linda Caplan  
Global Warming Campaign Manager  
Blumstein Network

"BASF staff was very helpful – stayed on the task and kept after a hard to reach party. The mediator was great!"

Mark Abelson, Esq.  
Campagnoli, Abelson & Campagnoli

"The [BASF] mediator was excellent! He was effective with some strong, forceful personalities."

Denis A. Leachette, Esq.  
Zacks, Urech & Leachette

World one of the top  
ADR Providers in  
The Bay Area's  
"Best of the  
Bay Area"  
2010 & 2011

# MEDIATION SERVICES

THE BAY ASSOCIATION OF  
S A N F R A N C I S C O



# QUALITY

# EXPERIENCE

## WHAT IS BASF'S MEDIATION SERVICE?

The Bar Association of San Francisco's Mediation Services is a private mediation service which will assist you with almost any type of dispute, from simple contract disputes to complex commercial matters.

## WHO ARE THE MEDIATORS?

They are established mediators who have private mediation practices and have met our extensive experience requirements. By going through BASF, you receive the services of these highly qualified mediators at a great value.

## HOW DO I LEARN MORE ABOUT THE MEDIATORS?

BASF's website ([www.sfbbar.org/mediation](http://www.sfbbar.org/mediation)) provides bios, photos and hourly rates of mediators. You can search by name or by area of law needed for your case. BASF staff is also always available to assist you with selection or to answer questions.

## HOW MUCH DOES THE SERVICE COST?

A \$250 per party administrative fee is paid to BASF at the time the Consent to Mediate form is filed. This fee covers the first hour of mediator preparation time and the first two hours of session time. Time beyond that is paid at the mediator's normal hourly rate.

## HOW IS THE MEDIATOR CHOSEN?

You may request a specific mediator from our website ([www.sfbbar.org/mediation](http://www.sfbbar.org/mediation)) and indicate your choice on the BASF Consent to Mediate form, or you may indicate on the form that you would like BASF staff to assist with the selection.

## WHAT SHOULD I GO THROUGH BASF? CAN'T I JUST CALL THE MEDIATOR DIRECTLY?

BASF mediators have agreed to provide three free hours as a service to BASF. If you go directly to one of our mediators, you do not qualify for the free hours unless you notify us. Once you have filed with us, you will talk directly to the mediator to ask questions and to set a convenient mediation date and time.

## HOW LONG IS THE MEDIATION SESSION?

The time spent in mediation will vary depending on your dispute. BASF mediators are dedicated to reaching a settlement, whether you need a few hours or several days.

## WHO CAN USE THE SERVICE?

BASF mediation can be utilized by anyone and is NOT limited to San Francisco residents or issues. Also, the service may be used before a court action is filed or at any time during a court action.

## OUR CASE IS PILED IN COURT; HOW DO WE USE BASF'S MEDIATION SERVICES?

When you file the San Francisco Superior Court's Stipulation to ADR form, check the box indicating "Mediation Services of BASF." Then complete BASF's Consent to Mediate form found on our website and file it with us. (If the matter was filed in a different county, please check with that court for the appropriate process.)

## WE ARE ON A DEADLINE; HOW QUICKLY CAN WE MEDIATE?

Once all parties have filed all the paperwork, BASF can normally have you in touch with the mediator within a day or two. If there is a deadline, BASF staff will give the matter top priority.

## WHAT TYPES OF DISPUTES CAN I MEDIATE?

BASF mediators are trained in 30+ areas of law. If you don't see the area you need on our website or in this brochure, contact us; it is very likely we can match your need with one of our panelists.

## MORE INFORMATION

Visit our website ([www.sfbbar.org/mediation](http://www.sfbbar.org/mediation)) where you can search by name or by area of law. For personal assistance, please call 415-982-1600.

**WWW.SFBBAR.ORG/MEDIATION**



**Superior Court of California, County of San Francisco  
Alternative Dispute Resolution  
Program Information Package**



The plaintiff must serve a copy of the ADR information package on each defendant along with the complaint. (CRC 3.221(c))

**WHAT IS ADR?**

Alternative Dispute Resolution (ADR) is the term used to describe the various options available for settling a dispute without a trial. There are many different ADR processes, the most common forms of which are mediation, arbitration and settlement conferences. In ADR, trained, impartial people decide disputes or help parties decide disputes themselves. They can help parties resolve disputes without having to go to court.

**WHY CHOOSE ADR?**

"It is the policy of the Superior Court that every noncriminal, nonjuvenile case participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to trial." (Local Rule 4)

ADR can have a number of advantages over traditional litigation:

- **ADR can save time.** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- **ADR can save money,** including court costs, attorney fees, and expert fees.
- **ADR encourages participation.** The parties may have more opportunities to tell their story than in court and may have more control over the outcome of the case.
- **ADR is more satisfying.** For all the above reasons, many people participating in ADR have reported a high degree of satisfaction.

**HOW DO I PARTICIPATE IN ADR?**

Litigants may elect to participate in ADR at any point in a case. General civil cases may voluntarily enter into the court's ADR programs by any of the following means:

- **Filing a Stipulation to ADR:** Complete and file the Stipulation form (attached to this packet) at the clerk's office located at 400 McAllister Street, Room 103;
- **Indicating your ADR preference on the Case Management Statement** (also attached to this packet); or
- **Contacting the court's ADR office** (see below) or the Bar Association of San Francisco's ADR Services at 415-982-1600 or [www.sfbar.org/adr](http://www.sfbar.org/adr) for more information.

For more information about ADR programs or dispute resolution alternatives, contact:

Superior Court Alternative Dispute Resolution  
400 McAllister Street, Room 103, San Francisco, CA 94102  
415-551-3876

Or, visit the court ADR website at [www.sfsuperiorcourt.org](http://www.sfsuperiorcourt.org)

The San Francisco Superior Court currently offers three ADR programs for general civil matters; each program is described below:

### **1) EARLY SETTLEMENT CONFERENCES**

The goal of early settlement is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of a dispute.

**(A) THE BAR ASSOCIATION OF SAN FRANCISCO (BASF) EARLY SETTLEMENT PROGRAM (ESP):** This program, provided in conjunction with the court, pairs parties with a two-member volunteer attorney panel. The panels are comprised of one plaintiff and one defense attorney, each with at least 10 years of trial experience. On occasion, a panelist with extensive experience in both plaintiff and defense roles serves as a sole panelist.

**Operation:** The settlement conference typically occurs 2 to 3 months prior to the trial date. BASF informs the participants of the conference date well in advance and provides the names of the panelists and location of the conference approximately 2 weeks prior to the conference. Panelists provide at no cost up to 2 hours of their time at each conference, and many panelists provide additional time at no cost if a settlement is imminent. A conference typically begins with a brief meeting with all parties and their attorneys during which each side presents an initial statement. The panelists then assist the parties in understanding and candidly discussing the strengths and weaknesses of their cases, utilizing private meetings as appropriate. If a case does not settle during the first two hours, parties have the option to hire the panelists to continue the conference.

**Cost:** BASF charges an administrative fee of \$250 per party. For information on fees for cases involving multiple parties, please contact BASF. Parties who meet certain eligibility requirements may request a waiver of the fee. For more information, please contact BASF's ESP Coordinator at 415-782-9000 ext. 8717 or visit [www.sfbar.org/esp](http://www.sfbar.org/esp).

**(B) COURT SETTLEMENT CONFERENCE:** Parties may elect to apply to the Presiding Judge's department for a specially-set mandatory settlement conference. See Local Rule 5.0 for further instructions. Upon approval of the Presiding Judge, the court will schedule the conference and assign the case for a settlement conference.

### **2) MEDIATION**

Mediation is a voluntary, flexible, and confidential process in which a neutral third party facilitates negotiations. The goal of mediation is to reach a mutually satisfactory agreement, before incurring the expense of going to court, that resolves all or part of a dispute after exploring the interests, needs, and priorities of the parties in light of relevant evidence and the law. A mediator strives to bring the parties to a mutually beneficial settlement of the dispute.

**(A) MEDIATION SERVICES OF THE BAR ASSOCIATION OF SAN FRANCISCO,** in cooperation with the Superior Court, is designed to help civil litigants resolve disputes before they incur substantial costs in litigation. While it is best to utilize the program at the outset of litigation, parties may use the program at any time while a case is pending.

**Operation:** A mediator provides at no cost one hour of preparation time and two hours of mediation time. After those three hours, if the case is not resolved, parties have the option to continue the process and pay the mediator at his or her regular hourly rate. BASF pre-screens all mediators based upon strict educational and experience requirements. Parties may select a specific mediator or BASF will help the parties make a selection. The BASF website contains photographs, biographies, and videos of the mediators as well as testimonials to assist with the selection process.

**Cost:** BASF charges an administrative fee of \$250 per party. For information on fees for cases involving multiple parties, please contact BASF. The hourly mediator fee beyond the first three hours will vary depending on the mediator selected. Parties who meet certain eligibility requirements may request a waiver of the fee. For more information, please contact BASF's Mediation Coordinator at 415-782-0000 ext. 8787 or visit [www.sfbar.org/mediation](http://www.sfbar.org/mediation).

**(B) PRIVATE MEDIATION:** Although not currently a part of the court's ADR program, civil disputes may also be resolved through private mediation. Parties may elect any private mediator or mediation organization of their choice; the selection and coordination of private mediation is the responsibility of the parties. Parties may find mediators and organizations on the Internet. The cost of private mediation will vary depending on the mediator selected.

### **3) ARBITRATION**

An arbitrator is neutral attorney who presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case.

**(A) JUDICIAL ARBITRATION:** When the court orders a case to arbitration it is called "judicial arbitration". The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial.

**Operation:** Pursuant to CCP 1141.11 and Local Rule 4, all civil actions in which the amount in controversy is \$50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. (Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.) A case is ordered to arbitration after the Case Management Conference. An arbitrator is chosen from the court's Arbitration Panel. Arbitrations are generally held between 7 and 9 months after a complaint has been filed. Judicial arbitration is not binding unless all parties agree to be bound by the arbitrator's decision. Any party may request a trial within 30 days after the arbitrator's award has been filed.

Local Rule 4.2 allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate after the filing of a complaint. If settlement is not reached through mediation, a case proceeds to trial as scheduled.

**Cost:** There is no cost to the parties for judicial arbitration.

**(B) PRIVATE ARBITRATION:** Although not currently a part of the court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties voluntarily consent to arbitration. If all parties agree, private arbitration may be binding and the parties give up the right to judicial review of the arbitrator's decision. In private arbitration, the parties select a private arbitrator and are responsible for paying the arbitrator's fees.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address)		FOR COURT USE ONLY
TELEPHONE NO.:		
ATTORNEY FOR (Name):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO 400 McARTHUR Street San Francisco, CA 94102-4514		
PLAINTIFF/PETITIONER:		
DEFENDANT/RESPONDENT:		
STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION (ADR)		CASE NUMBER:
DEPARTMENT 610		

- 1) The parties hereby stipulate that this action shall be submitted to the following ADR process:

  - Early Settlement Program of the Bar Association of San Francisco (BASF) - Pre-screened experienced attorneys provide a minimum of 2 hours of settlement conference time for a BASF administrative fee of \$250 per party. Waivers are available to those who qualify. BASF handles notification to all parties, conflict checks with the panelists, and full case management. [www.sfbbar.org/espo](http://www.sfbbar.org/espo)
  - Mediation Services of BASF - Experienced professional mediators, screened and approved, provide one hour of preparation and the first two hours of mediation time for a BASF administrative fee of \$250 per party. Mediation time beyond that is charged at the mediator's hourly rate. Waivers of the administrative fee are available to those who qualify. BASF assists parties with mediator selection, conflicts checks and full case management. [www.sfbbar.org/mediation](http://www.sfbbar.org/mediation)
  - Private Mediation - Mediators and ADR provider organizations charge by the hour or by the day, current market rates. ADR organizations may also charge an administrative fee. Parties may find experienced mediators and organizations on the Internet.
  - Judicial Arbitration - Non-binding arbitration is available to cases in which the amount in controversy is \$50,000 or less and no equitable relief is sought. The court appoints a pre-screened arbitrator who will issue an award. There is no fee for this program. [www.sfsuperiorcourt.org](http://www.sfsuperiorcourt.org)
  - Other ADR process (describe) \_\_\_\_\_

2) The parties agree that the ADR Process shall be completed by (date): \_\_\_\_\_

3) Plaintiff(s) and Defendant(s) further agree as follows:

---

**Name of Party Stipulating**

---

**Name of Party Signatory**

**Name of Party or Attorney Executing Stipulation**

**Name of Party or Attorney Executing Substitution**

**Signature of Party or Attorney**

---

**Signature of Party or Attorney**

Plaintiff  Defendant  Cross-defendant

Plaintiff  Defendant  Cross-defendant

**Dated:** \_\_\_\_\_

Dated:

Add

*um/s) attached*

---

Digitized by srujanika@gmail.com

Additional signature(s) attached

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):		FOR COURT USE ONLY
TELEPHONE NO.: E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):		
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
<b>PLAINTIFF/PETITIONER:</b> <b>DEFENDANT/RESPONDENT:</b>		
<b>CASE MANAGEMENT STATEMENT</b> (Check one): <input type="checkbox"/> <b>UNLIMITED CASE</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>LIMITED CASE</b> (Amount demanded is \$25,000 or less)		CASE NUMBER:
<b>A CASE MANAGEMENT CONFERENCE</b> is scheduled as follows: Date: _____ Time: _____ Dept.: _____ Div.: _____ Room: _____ Address of court (if different from the address above):		
<input type="checkbox"/> Notice of Intent to Appear by Telephone, by (name): _____		

**INSTRUCTIONS:** All applicable boxes must be checked, and the specified information must be provided.

1. Party or parties (answer one):
  - a.  This statement is submitted by party (name): \_\_\_\_\_
  - b.  This statement is submitted jointly by parties (names): \_\_\_\_\_
  
2. Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)
  - a. The complaint was filed on (date): \_\_\_\_\_
  - b.  The cross-complaint, if any, was filed on (date): \_\_\_\_\_
  
3. Service (to be answered by plaintiffs and cross-complainants only)
  - a.  All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
  - b.  The following parties named in the complaint or cross-complaint
    - (1)  have not been served (specify names and explain why not): \_\_\_\_\_
    - (2)  have been served but have not appeared and have not been dismissed (specify names): \_\_\_\_\_
    - (3)  have had a default entered against them (specify names): \_\_\_\_\_
  - c.  The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served): \_\_\_\_\_
  
4. Description of case
  - a. Type of case in  complaint     cross-complaint (Describe, including causes of action): \_\_\_\_\_

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

(If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request  a jury trial  a nonjury trial. (If more than one party, provide the name of each party requesting a jury trial):

6. Trial date

- The trial has been set for (date):
- No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (If not, explain):

c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. Estimated length of trial

The party or parties estimate that the trial will take (check one):

- days (specify number):
- hours (short causes) (specify):

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial  by the attorney or party listed in the caption  by the following:

a. Attorney:

b. Firm:

c. Address:

d. Telephone number:

e. E-mail address:

Additional representation is described in Attachment 8.

f. Fax number:

g. Party represented:

9. Preference

This case is entitled to preference (specify code section):

10. Alternative dispute resolution (ADR)

- a. ADR Information package. Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.

(1) For parties represented by counsel: Counsel  has  has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.

(2) For self-represented parties: Party  has  has not reviewed the ADR information package identified in rule 3.221.

- b. Referral to judicial arbitration or civil action mediation (if available).

(1)  This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.

(2)  Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

(3)  This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. (specify exemption):

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (check all that apply and provide the specified information):

	The party or parties completing this form are willing to participate in the following ADR processes (check all that apply):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (attach a copy of the parties' ADR stipulation):
(1) Mediation	<input type="checkbox"/>	<input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (date): <input type="checkbox"/> Agreed to complete mediation by (date): <input type="checkbox"/> Mediation completed on (date): 
(2) Settlement conference	<input type="checkbox"/>	<input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date): <input type="checkbox"/> Settlement conference completed on (date): 
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date): 
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date): 
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date): 
(6) Other (specify):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date): 

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

**11. Insurance**

- a.  Insurance carrier, if any, for party filing this statement (name):
- b. Reservation of rights:  Yes  No
- c.  Coverage issues will significantly affect resolution of this case (explain):

**12. Jurisdiction**

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

Bankruptcy  Other (specify):

Status:

**13. Related cases, consolidation, and coordination**

- a.  There are companion, underlying, or related cases.

- (1) Name of case:
- (2) Name of court:
- (3) Case number:
- (4) Status:

Additional cases are described in Attachment 13a.

- b.  A motion to  consolidate  coordinate will be filed by (name party):

**14. Bifurcation**

- The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

**15. Other motions**

- The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):

**16. Discovery**

- a.  The party or parties have completed all discovery.
- b.  The following discovery will be completed by the date specified (describe all anticipated discovery):

Party	Description	Date
-------	-------------	------

- c.  The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (specify):

PLAINTIFF/PETITIONER:	CASE NUMBER: CM-110
DEFENDANT/RESPONDENT:	

**17. Economic litigation**

- a.  This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b.  This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

**18. Other issues**

- The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

**19. Meet and confer**

- a.  The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

**20. Total number of pages attached (if any): \_\_\_\_\_**

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

 Additional signatures are attached.

**SUMMONS on First Amended Complaint  
(CITACION JUDICIAL)**

SUM-100

FOR COURT USE ONLY  
SOLO PARA USO DE LA CORT

**NOTICE TO DEFENDANT: THE INTERPUBLIC GROUP OF  
(AVISO AL DEMANDADO): COMPANIES, INC., a Delaware Corporation;  
DRAFTPCB, INC., a Delaware Corporation; and DOES 1 through 50,  
inclusive.**

**YOU ARE BEING SUED BY PLAINTIFF: BRENDAN McPHILLIPS, an  
(LO ESTÁ DEMANDANDO EL DEMANDANTE): individual, LEONARD  
SHARLET, an individual, JOHN BRUSHWOOD, an individual, and  
EVAN FRANCO, an individual.**

**NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.**

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at the court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/seithelp](http://www.courtinfo.ca.gov/seithelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/seithelp](http://www.courtinfo.ca.gov/seithelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory limit for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's fee must be paid before the court will dismiss the case. **AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su vereda. Lea la información a continuación.**

**Todos 30 DÍAS DE CALENDARIO** después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en este corto y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegerán. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtcare.ca.gov](http://www.courtcare.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que dé un formulario de exención de pago de cuotas. Si se presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su asiento, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de revisión o abogado. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un grupo de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtcare.ca.gov](http://www.courtcare.ca.gov)) o póngase en contacto con la corte o el colegio de abogados locales. **AVISO: Por ley, la corte tiene derecho a restringir las cuotas y las costas causadas por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibible mediante un acuerdo o una conciliación de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda descochar el caso.**

The name and address of the court is:  
(El nombre y dirección de la corte es):

San Francisco County Superior Court  
400 McAllister Street  
400 McAllister Street  
San Francisco, California 94102

CASE NUMBER:  
(Número del Caso):

C66-12-524135

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

David M. deRubertis (SBN 208709)  
The deRubertis Law Firm, PLC

818.761.2322 818.761.2323

4219 Coldwater Canyon Avenue  
Studio City, California 91604  
DATE: September 27, 2012  
(Fecha)

CLERK OF THE COURT

Clerk, by \_\_\_\_\_  
(Secretario)

CAROLYN BALISTRERI

, Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (Form POS-010).  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served:

REAU

1.  as an individual defendant.
  2.  as the person sued under the fictitious name of (specify): *The Interpublic Group of Companies, Inc., a Delaware corporation*
  3.  on behalf of (specify):
- under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservator)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
4.  by personal delivery on (date):

SUMMONS

Legal  
Services  
(a) File

Code of Civil Procedure §§ 412.30, 405

1 David M. deRubertis, State Bar No. 208709  
2 Tyler F. Clark, State Bar No. 258309  
3 The deRubertis Law Firm, PLC  
4 4219 Coldwater Canyon Avenue  
5 Studio City, California 91604  
6 Telephone: (818) 761-2322  
7 Facsimile: (818) 761-2323  
E-Mail: [David@deRubertisLaw.com](mailto:David@deRubertisLaw.com)  
E-Mail: [Tyler@deRubertisLaw.com](mailto:Tyler@deRubertisLaw.com)

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

JCT 29 2012

Clerk of THE COURT  
By CAROLYN HALSTED  
Deputy Clerk

6 Attorneys for Plaintiffs  
7 Brendan McPhillips, Leonard Sharlet,  
John Brushwood and Evan Franco

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN FRANCISCO

10 BRENDAN McPHILLIPS, an individual,  
11 LEONARD SHARLET, an individual,  
12 JOHN BRUSHWOOD, an individual, and  
EVAN FRANCO, an individual,

13 Plaintiffs,

14 v.

15 THE INTERPUBLIC GROUP OF  
COMPANIES, INC., a Delaware Corporation;  
16 DRAFTFCB, INC., a Delaware Corporation;  
and DOES 1 through 50, inclusive,

17 Defendants.

Case No.: CGG-12-524135

FIRST AMENDED COMPLAINT FOR:

- (1) Solicitation of Employee by Misrepresentation (Labor Code §970);
- (2) Fraud and Deceit;
- (3) Negligent Misrepresentation;
- (4) Promissory Estoppel;
- (5) Breach of Oral Contract;
- (6) Wrongful Termination in Violation of Public Policy; and
- (7) Remedies under Labor Code Private Attorney Generals Act of 2004 (Labor Code §2698, et seq.).

JURY TRIAL DEMAND

21 Plaintiffs, BRENDAN McPHILLIPS, LEONARD SHARLET, JOHN BRUSHWOOD, and  
22 EVAN FRANCO, as individuals, hereby allege against Defendants, THE INTERPUBLIC GROUP  
23 OF COMPANIES, INC., DRAFTFCB, INC.; and DOES 1 through 50, inclusive, as follows:

25 GENERAL ALLEGATIONS

- 26 1. The true names, identities, or capacities whether individual, corporate, associate, or  
otherwise, of Defendants, DOES 1 through 50, inclusive, are unknown to the Plaintiffs, who  
therefore sue said Defendants by such fictitious names. When the true names, identities or

- 1 -  
FIRSt AMENDED COMPLAINT

FILED BY FAX

1 capacities of such fictitiously designated Defendants are ascertained, Plaintiffs will ask leave of  
2 this Court to amend this Complaint and to insert said true names, identities, and capacities,  
3 together with the proper charging allegations.

4       2. Plaintiffs are informed and believe and thereon allege that each of the Defendants  
5 sued herein as a DOE is responsible in some manner and liable herein for negligent, wanton,  
6 reckless, and tortuous conduct, strict liability, and by such wrongful conduct, proximately caused  
7 the Plaintiffs' injuries and damages.

8       3. At relevant times mentioned herein, Plaintiff, BRENDAN McPHILLIPS, was  
9 employed by Defendants and worked in Visalia, California and the surrounding areas.

10      4. At relevant times mentioned herein, Plaintiff, LEONARD SHARLET, was  
11 employed by Defendants and worked for Defendants in Visalia, California and the surrounding  
12 areas.

13      5. At relevant times mentioned herein, Plaintiff, JOHN BRUSHWOOD, was  
14 employed by Defendants and worked for Defendants in San Francisco, California and the  
15 surrounding areas.

16      6. At relevant times mentioned herein, Plaintiff, EVAN FRANCO, was employed  
17 by Defendants and worked for Defendants in Santa Ana, California and the surrounding areas.

18      7. Defendants THE INTERPUBLIC GROUP OF COMPANIES, INC., DRAFTFCB,  
19 INC. and DOES 1 through 25, inclusive, were corporations, associations, partnerships, contractors,  
20 joint ventures, or other business entities, organized and existing under the laws of the State of  
21 Delaware and at all times herein mentioned conducted business in the State of California, and  
22 made promises and/or representations that give rise to this lawsuit including in the County of San  
23 Francisco. Defendants DOES 26 through 50 were individuals who were the agents, employees,  
24 supervisors, members, volunteers, servants, partners, representatives, independent contractors,  
25 joint venturers or other participants with or of Defendants THE INTERPUBLIC GROUP OF  
26 COMPANIES, INC., DRAFTFCB, INC. and DOES 1 through 25, and in doing the things  
27 hereinafter mentioned, were acting within the course and scope of said agency, employment,  
28 membership or other relationship with said Defendants.

1  
2       8. Plaintiffs are informed, and believe, and thereon allege that, at all times relevant,  
3 each of the Defendants was acting as an agent, joint venturer, joint employer, co-employer,  
4 integrated enterprise, parent/subsidiary, and/or alter ego for each of the other Defendants and each  
5 were co-conspirators with respect to the acts and the wrongful conduct alleged herein such that  
6 each is responsible for the acts of the other.

7       9. Likewise, Plaintiffs are further informed, and believe and thereon allege that  
8 Defendant THE INTERPUBLIC GROUP OF COMPANIES, INC., exercised sufficient control  
9 over Defendant DRAFTFCB, INC. and over the terms and conditions of Plaintiffs' employment  
10 with Defendant DRAFTFCB, INC. so as to be an "employer" under the law and subject to liability  
11 for the wrongful conduct alleged herein on that basis.

12       10. At all times herein mentioned, Defendants, whether or not specifically identified or  
13 designated herein as a DOE, and each of them, were the agents, employees, servants, partners,  
14 independent contractors, joint venturers and participants with all other Defendants, and with each  
15 other, and in doing the things hereinafter mentioned, were agents, employees, servants, partners,  
16 joint venturers, and with the consent and permission of the co-Defendants, and each of them.

17       11. Plaintiffs name said Defendants herein, and each of them, because Plaintiffs are in  
18 doubt and does not know exactly from which of the said Defendants Plaintiffs are entitled to  
19 redress in light of the fact that the injuries and damages to Plaintiffs herein alleged were caused by  
20 the combined negligence of all of the Defendants, or one or more of them. For that reason,  
21 Plaintiffs name all of the said Defendants, and asks that the Court determine the liability of each  
22 and all of the said Defendants in this action and to what extent and what responsibility falls upon  
23 each of said Defendants, and that the Court award judgment to Plaintiffs as against such or all  
24 Defendants, either jointly or separately, as may be found liable.  
25

26                   **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

27       12. On or about October 14, 2010 the California Public Utilities Commission  
28 ("CPUC") unveiled Engage 360, a new brand name and web portal for statewide use to increase

1 consumer awareness of and participation in energy-saving activities. The brand was launched in  
2 September 2010 via a \$60 million investor-owned utility Statewide Marketing, Education &  
3 Outreach 2010-2012 energy efficiency program implemented by DRAFTFCB, INC.

4 13. In early 2011, Defendants began recruiting Plaintiffs Brendan McPhillips, Leonard  
5 Sharlet and John Brushwood for positions as Assistant Community Managers. In or around July  
6 2011, Defendants began recruiting Plaintiff Evan Franco for the same position. All the positions  
7 were located throughout California, including in San Francisco, Visalia and Santa Ana.

8 14. During the hiring process, Defendants affirmatively represented to each Plaintiff  
9 that Engage 360 was fully funded through at least the end of 2012 and, therefore, the positions  
10 Plaintiffs were offered and being hired into were fully funded through the end of 2012. Plaintiffs  
11 were also provided literature stating the same. This was a major selling point to Plaintiffs.

12 15. Based on the Defendants' representations that their positions and the program was  
13 fully funded through the end of 2012, Plaintiffs changed their residences and in some cases moved  
14 their lives across the country and turned down other job opportunities to accept employment with  
15 Defendants.

16 16. On or about March 28, 2011, Plaintiffs Brendan McPhillips, Leonard Sharlet and  
17 John Brushwood began their employment with Defendants.

18 17. On or about August 11, 2011, Plaintiff Evan Franco began his employment with  
19 Defendants.

20 18. In or about October 2011, Plaintiffs were called into meetings and informed that  
21 each of them were being laid off. Defendants then explained to Plaintiffs that the project no longer  
22 had funding – a fact contrary to the express promise of a fully funded program through the  
23 conclusion of 2012 made at in the hiring process to recruit Plaintiffs to accept employment.

25 **FACTS RELEVANT TO PRIVATE ATTORNEY GENERAL ACT CLAIMS**

26 19. Plaintiffs bring a portion of this lawsuit on behalf of themselves and all other  
27 aggrieved employees who suffered from the violations alleged herein under the Labor Code  
28 Private Attorney General Act of 2004 (Cal. Labor Code §2698, et seq.).

1       20. Plaintiffs, BRENDAN MCPHILLIPS, LEONARD SHARLET, JOHN  
2 BRUSHWOOD and EVAN FRANCO have given written notice to Defendants the  
3 INTERPUBLIC GROUP OF COMPANIES, INC. and DRAFTFCB, INC. and the California  
4 Labor and Workforce Development Agency (LWDA) by letters specifying the Labor Codes  
5 violated and describing the facts and theories to support the particular violations. Plaintiffs gave a  
6 written notice on or about September 10, 2012.

7       21. On October 11, 2012, the LWDA notified the aggrieved employees, BRENDAN  
8 MCPHILLIPS, LEONARD SHARLET, JOHN BRUSHWOOD, and EVAN FRANCO and  
9 Defendants the INTERPUBLIC GROUP OF COMPANIES, INC. and DRAFTFCB, INC. that it  
10 does not intend to investigate these claims. Therefore, BRENDAN MCPHILLIPS, LEONARD  
11 SHARLET, JOHN BRUSHWOOD, and EVAN FRANCO have complied with all preconditions to  
12 alleging remedies under California Labor Code section 2698, et seq.

13

14                   **FIRST CAUSE OF ACTION FOR SOLICITATION OF AN**  
15                   **EMPLOYEE BY MISREPRESENTATION (LABOR CODE §970)**  
16                   **AGAINST ALL DEFENDANTS**

17       22. Plaintiffs restate and incorporate by reference each and every allegation contained  
18 in paragraphs 1 through 21, inclusive, as though fully set forth herein.

19       23. Defendants made representations to Plaintiffs regarding the kind, character, or  
20 existence of work and/or the length of time the work would last.

21       24. Defendants representations were not true.

22       25. Defendants knew when the representations were made that they were not true.

23       26. Defendants intended that Plaintiffs rely on the representations.

24       27. Plaintiffs reasonably relied on Defendants' representations and changed their  
25 residences for the purpose of working for Defendants.

26       28. As a direct and foreseeable result of the aforesaid acts of said Defendants, Plaintiffs  
27 have lost and will continue to lose income, benefits, and other damages in an amount to be proven  
28 at the time of trial. Plaintiff's claim such amount as damages together with pre-judgment interest

1 pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-judgment  
2 interest. Under Labor Code section 972, Plaintiffs are entitled to "double damages" resulting from  
3 the misrepresentations.

4 29. As a result of the aforesaid acts of Defendants, Plaintiffs claim general damages for  
5 mental and emotional distress and aggravation in an amount to be proven at the time of trial.

6 30. The above described acts of Defendants, by and through their managing agents,  
7 officers or directors, were engaged in with a deliberate, cold, callous, fraudulent and intentional  
8 manner in order to injure and damage Plaintiffs and/or with a conscious disregard of Plaintiffs and  
9 their rights. Such acts were despicable, and constitute malice, fraud and/or oppression within the  
10 meaning of Civil Code section 3294. Plaintiffs request an assessment of punitive damages against  
11 Defendants, in an amount to be proven at time of trial.

12 31. As a proximate result of the foregoing conduct, which violated the provisions of  
13 Labor Code section 970 , Plaintiffs have been forced to and will incur attorney's fees and costs in  
14 the prosecution of this claim, in an amount to be proved at trial. Plaintiffs are in the process of  
15 exhausting their administrative remedies under the Labor Code Private Attorney Generals Act of  
16 2004 (Labor Code section 2698, et seq.) as indicated herein, and will amend this Complaint upon  
17 exhaustion to plead all rights and remedies available under this Act, including the recovery of  
18 attorney's fees for a proven violation of Labor Code section 970.

19

20 **SECOND CAUSE OF ACTION FOR FRAUD AND**  
**DECEIT AGAINST ALL DEFENDANTS**

21 32. Plaintiffs restate and incorporate by reference each and every allegation contained  
22 in paragraphs 1 through 31, inclusive, as though fully set forth herein.

23 33. Defendants represented to Plaintiffs that an important fact was true, or that  
24 Defendants intentionally failed to disclose an important fact to Plaintiffs, or that Defendants  
25 disclosed some facts to Plaintiffs but intentionally failed to disclose other important facts, making  
26 the disclosure deceptive, or that Defendants intentionally failed to disclose an important fact that  
27 was known only to it and that Plaintiffs could not have discovered.

34. Defendants representations were false, and/or Plaintiffs were unaware of those material facts concealed by Defendants.

35. Defendants knew that the representations were false when they were made, or that Defendants made the representations recklessly and without regard for its truth. Moreover, Defendants knew that the concealed facts were material to Plaintiffs' decisions, yet failed to disclose them.

36. Defendants intended that Plaintiffs rely on Defendants' representations, or that Defendants intended to deceive Plaintiffs by concealing the material facts.

37. Plaintiffs reasonably relied on Defendants' representations and/or deception

38. As a direct and foreseeable result of the aforesaid acts of said Defendants, Plaintiffs have lost and will continue to lose income, benefits, and other damages in an amount to be proven at the time of trial. Plaintiffs claim such amount as damages together with pre-judgment interest pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-judgment interest.

39. As a result of the aforesaid acts of Defendants, Plaintiffs claim general damages for mental and emotional distress and aggravation in an amount to be proven at the time of trial.

40. The above described acts of Defendants, by and through their managing agents, officers or directors, were engaged in with a deliberate, cold, callous, fraudulent and intentional manner in order to injure and damage Plaintiffs and/or with a conscious disregard of Plaintiffs and their rights. Such acts were despicable, and constitute malice, fraud and/or oppression within the meaning of Civil Code section 3294. Plaintiffs request an assessment of punitive damages against Defendants, in an amount to be proven at time of trial.

### **THIRD CAUSE OF ACTION FOR NEGLIGENT**

## **MISREPRESENTATION AGAINST ALL DEFENDANTS**

41. Plaintiffs restate and incorporate by reference each and every allegation contained in paragraphs 1 through 40, inclusive, as though fully set forth herein.

28 42. Defendants represented to Plaintiffs that important facts were true

- 1       43. Defendants representations were not true.
- 2       44. Defendants had no reasonable grounds for believing that its representations were  
3 true when they were made.
- 4       45. Defendants intended that Plaintiffs rely on the representations.
- 5       46. Plaintiffs reasonably relied on Defendants' representations.
- 6       47. As a direct and foreseeable result of the aforesaid acts of said Defendants, Plaintiffs  
7 have lost and will continue to lose income, benefits, and other damages in an amount to be proven  
8 at the time of trial. Plaintiffs claim such amount as damages together with pre-judgment interest  
9 pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-judgment  
10 interest.
- 11      48. As a result of the aforesaid acts of Defendants, Plaintiffs claim general damages for  
12 mental and emotional distress and aggravation in an amount to be proven at the time of trial.
- 13

14                          **FOURTH CAUSE FOR PROMISSORY ESTOPPEL**  
15                          **AGAINST ALL DEFENDANTS**

- 16      49. Plaintiffs restate and incorporate by reference each and every allegation contained  
17 in paragraphs 1 through 48, inclusive, as though fully set forth herein.
- 18      50. Defendants made promises to Plaintiffs.
- 19      51. Plaintiffs relied on the promises made by Defendants to their detriment.
- 20      52. As a direct and foreseeable result of the aforesaid acts of said Defendants, Plaintiffs  
21 have lost and will continue to lose income, benefits, and other damages in an amount to be proven  
22 at the time of trial. Plaintiffs claim such amount as damages together with pre-judgment interest  
23 pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-judgment  
24 interest.
- 25
- 26
- 27
- 28

1                   **FIFTH CAUSE OF ACTION FOR BREACH OF ORAL**  
2                   **CONTRACT AGAINST ALL DEFENDANTS**

3       53. Plaintiffs restate and incorporate by reference each and every allegation contained  
4       in paragraphs 1 through 52, inclusive, as though fully set forth herein.

5       54. Plaintiffs and Defendants entered into a contract.

6       55. Plaintiffs did all, or substantially all, of the significant things that the contract  
7       required them to do, or that Plaintiffs were excused from doing those things.

8       56. All of the conditions required by the contract for Defendants' performance had  
9       occurred or were excused.

10      57. Defendants failed to do something that the contract required it to do, or that  
11      Defendant did something that the contract prohibited it from doing.

12      58. As a direct and foreseeable result of the aforesaid acts of said Defendants, Plaintiffs  
13      have lost and will continue to lose income, benefits, and other damages in an amount to be proven  
14      at the time of trial. Plaintiffs claim such amount as damages together with pre-judgment interest  
15      pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-judgment  
16      interest.

17                   **SIXTH CAUSE OF ACTION FOR WRONGFUL TERMINATION IN**  
18                   **VIOLATION OF PUBLIC POLICY AGAINST ALL DEFENDANTS**

19       59. Plaintiffs restate and incorporate by reference each and every allegation contained  
20       in paragraphs 1 through 58, inclusive, as though fully set forth herein.

21       60. Defendants discharged Plaintiffs.

22       61. As set forth above, said actions by Defendants were wrongful and in violation of  
23      the fundamental principles of the public policy of the State of California as reflected in its laws,  
24      objectives and policies. Said laws, which establish these fundamental public policies include,  
25      without limitation: California Labor Code sections 970 and 971; and the California Constitution.

26       62. As a direct and foreseeable result of the aforesaid acts of said Defendants, Plaintiffs  
27      have lost and will continue to lose income, benefits, and other damages in an amount to be proven

1 at the time of trial. Plaintiffs claim such amount as damages together with pre-judgment interest  
2 pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-judgment  
3 interest.

4 63. As a result of the aforesaid acts of Defendants, Plaintiffs claim general damages for  
5 mental and emotional distress and aggravation in an amount to be proven at the time of trial.

6 64. The above described acts of Defendants, by and through their managing agents,  
7 officers or directors, were engaged in with a deliberate, cold, callous, fraudulent and intentional  
8 manner in order to injure and damage Plaintiffs and/or with a conscious disregard of Plaintiffs and  
9 their rights. Such acts were despicable, and constitute malice, fraud and/or oppression within the  
10 meaning of Civil Code section 3294. Plaintiffs request an assessment of punitive damages against  
11 Defendants, in an amount to be proven at time of trial.

12

13 **SEVENTH CAUSE OF ACTION FOR**  
14 **REMEDIES UNDER THE CALIFORNIA LABOR CODE**  
15 **PRIVATE ATTORNEY GENERALS ACT OF 2004**

16 (Labor Code §2698, et seq.)

17 65. Plaintiff incorporates by reference and re-alleges as if fully stated herein the  
18 material allegations set out in paragraphs 1 through 64.

19 66. California Labor Code section 2698, et seq. ("PAGA") permits Plaintiffs to recover  
20 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section  
21 2699.5.

22 67. Defendants' conduct, as alleged herein, violates California Labor Code section 970.

23 68. Pursuant to California Labor Code sections 2699(a), 2699.3, and 2699.5, Plaintiffs  
24 are entitled to recover civil penalties against Defendants, in addition to other remedies, for its  
25 violations (including attorney's fees) for a proven violation of Labor Code section 970.

26 **WHEREFORE**, Plaintiffs pray judgment against the Defendants, and each of them, as  
27 follows:

28 1. For general and special damages according to proof;

- 1           2.     For loss of earnings and earning capacity and/or other economic damages;  
2 according to proof, including double-damages on the First Cause of Action;  
3           3.     For pre-judgment interest to the extent allowed by law;  
4           4.     For costs of suit incurred herein;  
5           5.     For punitive and/or exemplary damages in an amount to punish Defendants;  
6           6.     For attorney's fees in prosecuting this action on the First and Seventh Causes of  
7 Action under the Labor Code Private Attorneys General Act of 2004); and  
8           7.     For such other and further relief as the Court deems just and proper.  
9

10 DATED: October 29, 2012

The deRubertis Law Firm, PLC

11 By 

12           David M. deRubertis, Esq.  
13           Tyler F. Clark, Esq.  
14           Attorneys for Plaintiffs  
15           Brendan McPhillips, Leonard Sharlet,  
16           John Brushwood, and Evan Franco

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial by jury on all issues so triable in the Complaint.

DATED: October 29, 2012

**The deRubertis Law Firm, PLC**

By                           
David M. deRubertis, Esq.  
Tyler F. Clark, Esq.  
Attorneys for Plaintiffs  
Brendan McPhillips, Leonard Sharlet,  
John Brushwood, and Evan Franco

**EXHIBIT B**

1 David M. deRubertis, State Bar No. 208709  
2 Tyler F. Clark, State Bar No. 258309  
3 **The deRubertis Law Firm, PLC**  
4 4219 Coldwater Canyon Avenue  
5 Studio City, California 91604  
Telephone: (818) 761-2322  
Facsimile: (818) 761-2323  
E-Mail: [David@deRubertisLaw.com](mailto:David@deRubertisLaw.com)  
E-Mail: [Tyler@deRubertisLaw.com](mailto:Tyler@deRubertisLaw.com)

6 Attorneys for Plaintiffs:  
Brendan McPhillips, Leonard Sharlet,  
7 John Brushwood and Evan Franco.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO.**

10 BRENDA McPHILLIPS, an individual,  
11 LEONARD SHARLET, an individual,  
12 JOHN BRUSHWOOD, an individual, and  
EVAN FRANCO, an individual,

13 Plaintiffs,

14 v.

15 THE INTERPUBLIC GROUP OF  
COMPANIES, INC., a Delaware Corporation;  
16 DRAFTFCB, INC., a Delaware Corporation;  
and DOES 1 through 50, inclusive,

**Defendants.**

Case No.: CGG-12-524135

**DEMAND FOR INSPECTION AND  
PRODUCTION OF DOCUMENTS AND  
TANGIBLE ITEMS, SET ONE,  
PROPOUNDED BY PLAINTIFF EVAN  
FRANCO TO DEFENDANT DRAFTFCB,  
INC.**

Complaint Filed: September 12, 201  
Trial Date: None

## **PROPOUNDING PARTY: EVAN FRANCO**

**RESPONDING PARTY: DEFENDANT DRAFTFCB, INC.**

**SET NUMBER:** **ONE (1)**

Demand is hereby made, pursuant to Code of Civil Procedure section 2031, that you produce and permit inspection and copying of the documents described below. The place of inspection shall be the deRubertis Law Firm, PLC, located at 4219 Coldwater Canyon Avenue, Studio City, California 91604 or at such other location as agreed by the parties. The time for such

inspection shall be thirty (30) days from the date of service of this demand at 10:00 a.m., and continuing as long as reasonably necessary.

## **DEFINITIONS**

As used herein, the following terms shall have the following meanings:

A. "DOCUMENT" means all originals, drafts and copies that differ in any way from the originals of all written, recorded or graphic matter, whether produced or reproduced by handwriting, magnetic recording, photograph, printing, tape, transcription of spoken language or other record of spoken language, typewriting, writing or any other means as defined in Evidence Code §250, and includes without limitation agreements, appointment books, bank statements, bills, books, business records, facsimiles, calendars, cards, checks, charts, computer printouts and tapes, correspondence, diaries, file cards, films, financial statements and reports, handwritten notes, including "post-its" or other type adhesive notes, invoices, journals, ledgers, letters, logs, memoranda, memorials in any form of telephone conversations, minutes, notes, notices, pamphlets, papers, purchase orders, personnel records, receipts, recordings, reports, telegrams, and any other pertinent information set forth in written language or any electronic representation thereof and any carbon or copies of such material, if you do not have control over or possession of the original.

"DOCUMENT" also includes all electronically stored information, including but not limited to information stored by computer or on a computer disk, diskette, tape or card, as well as any electronic recording, tape recording, photograph, video, file, microfilm, microfiche, or similar recording of words, images, sounds, pictures, or information of any kind.

"DOCUMENT" also includes any and all drafts of, and amendments, or supplements to, any of the foregoing, whether prepared by you or any other person, as well as copies of the document that

1 differ from the copy being produced (e.g., a differing copy is one that contains handwritten notes,  
2 interlineation, underlining, and the like).

3 If a "DOCUMENT" is an electronic mail, the electronic mail should be produced in its  
4 original format so that any and all attachments to the electronic mail are produced and the entire  
5 chain of electronic mail communication is produced.

6 B. "PERSON" means all individuals and entities of any nature whatsoever and includes,  
7 in the plural as well as in the singular, any natural person, firm, association, partnership, joint  
8 venture, corporation, subdivision or part thereof, or any other entity, including all representatives of  
9 any such person or persons. The masculine pronoun shall also include the feminine.

10 C. "YOU" or "YOUR" as used herein shall mean the party to whom this discovery  
11 request is directed, and, if the party to whom this request is directed is an entity, it shall include any  
12 and all agents, officers, directors, employees, independent contractors or other representatives of the  
13 entity to whom this request is directed.

14 D. "PERTAINING" and "RELATING," as used in this request, means evidencing,  
15 memorializing, referring, constituting, containing, discussing, describing, embodying, reflecting,  
16 identifying, mentioning, stating, or otherwise relating to in any way, in whole or in part, the subject  
17 matter referred to in this request.

18 E. "PLAINTIFF," as used in this request, means the Plaintiff in this action, Evan Franco.

19 F. "COMPLAINT," as used in this request, means the Complaint for Damages on file in  
20 this action.

21 G. The term "PERSONNEL FILE" includes any and all records maintained either in the  
22 normal course of business or for any special purpose with respect to the application, course of  
23 employment, and termination of any employee of Defendant, and specifically includes applications,  
24

1 disciplinary notices, performance evaluations, employment histories or summaries, records of  
2 residential address and telephone numbers, termination notices, job assignments or classification  
3 records, compensation, and other similar records. The term "PERSONNEL FILE" includes, but is  
4 not limited to, all writings within the meaning of Labor Code section 1198.5.  
5

6 H. "IDENTIFY" or "IDENTIFYING" means:

- 7       a. with respect to an individual, state the person's name, title at the time in question,  
8 employer and business address at the time in question, employer and business address at the time in  
9 question and dates of employment (if an employee of YOURS), and current or last known employer,  
10 business address, and home address;
- 11       b. with respect to a company, state the name of the company, the place of  
12 incorporation of the company, and the address of the company's principal place of business;
- 13       c. with respect to a DOCUMENT, state the names of the author or creator and the  
14 addressee, the subject matter or title, the date of the DOCUMENT, its present location AND  
15 custodian, and, if the DOCUMENT is an insurance policy or cover note, the policy number or cover  
16 note number;
- 17       d. with respect to a meeting, state the date, location, and subject matter of the  
18 meeting, and IDENTIFY the participants in the meeting;
- 19       e. with respect to an insurance claim, or notice of potential claim, state the identity of  
20 the policyholder;
- 21       f. with respect to a LIABILITY POLICY, state the policy number, policy period and  
22 stated limits of the policy;
- 23       g. with respect to a lawsuit, state the names of the parties, docket number, court, and  
24 the current status of the litigation.

I. "TERMINATE," "TERMINATED," OR "TERMINATION" means the separation from employment by an employee of YOURS, whether the employee is fired, terminated, laid-off, voluntarily quits, mutually agrees with YOU to leave employment or any other end of the employment relationship.

## INSTRUCTIONS

1. The DOCUMENTS produced pursuant to this Request must be segregated and identified according to the specific request to which they are responsive. Duplicate copies of DOCUMENTS, which are responsive to, more than one request need not be produced if the specific request to which the DOCUMENTS relate is designated.

2. Whenever appropriate, the singular form of a word shall be interpreted in the plural or vice versa; verb tenses shall be interpreted to include past, present and future tenses; the terms "and" as well as "or" shall mean "and/or," so that no DOCUMENT shall fail to be produced because of a limiting interpretation of the terms "and" or "or"; and words imparting the masculine include the feminine and vice versa.

3. The DOCUMENTS requested by this Request specifically include, but are not limited to, those DOCUMENTS in the possession custody or control of YOUR agents representatives, attorneys, accountants, auditors, investigators, consultants, or any other PERSON acting on YOUR behalf.

4. If YOU object to any part of any category of DOCUMENTS requested, please specify each such part, the basis for the objection, and indicate the extent to which YOU will be producing DOCUMENTS responsive to that category of documents requested.

5. If YOU withhold any DOCUMENT demanded on the grounds of privilege, please specify for each such DOCUMENT:

- 1        a. the name and job title of each author of the DOCUMENT;
- 2        b. the name and job title of each recipient of it and any other PERSON to whom a copy
- 3        was furnished;
- 4        c. the date of the DOCUMENT;
- 5        d. a brief description of the general subject matter of the DOCUMENT;
- 6        e. each paragraph of this demand to which the DOCUMENT is responsive; and
- 7        f. the type of privilege claimed.
- 8        6. If the Request calls for the production of a DOCUMENT that has been destroyed,
- 9        placed beyond YOUR control, or otherwise disposed of, set forth with respect to each such
- 10      DOCUMENT:
- 11        a. the author of the DOCUMENT;
- 12        b. the addressee, if any, and those PERSONS, if any, specified in the DOCUMENT to
- 13        receive a copy thereof;
- 14        c. the title of the DOCUMENT, if any, or other
- 15        identifying data;
- 16        d. the type of DOCUMENT (e.g., memorandum, letter);
- 17        e. in summary, the nature and subject matter of the DOCUMENT;
- 18        f. the date the DOCUMENT was prepared;
- 19        g. the date the DOCUMENT was sent or received by YOU, as the case may be;
- 20        h. the identity of all individuals to whom the substance of the DOCUMENT was
- 21        transmitted, or who saw such DOCUMENT, and under what circumstances;
- 22        i. the present location of the DOCUMENT, if not destroyed; and
- 23
- 24
- 25
- 26
- 27
- 28

j. the name, title, home and business address, and the home and business telephone number, of the current custodian of the DOCUMENT.

7. When the Request does not specifically ask for a particular DOCUMENT but the DOCUMENT would help to make the production complete, comprehensive or not misleading, please produce the DOCUMENT. Only non-identical copies of DOCUMENTS are to be considered separate DOCUMENTS.

8. Unless otherwise indicated, all of the requests set forth below call for responsive DOCUMENTS created at any time notwithstanding the fact that some of those requests relate to events occurring during specific time periods.

## **REQUESTS**

1. The PLAINTIFF's complete personnel file.
  2. Any and all DOCUMENTS PERTAINING or RELATING to PLAINTIFF's job performance while employed by YOU, including but not limited to performance appraisals or evaluations, commendations, awards, and/or letters of thanks, recognition or appreciation or any other similar DOCUMENTS.
  3. Any and all DOCUMENTS signed by PLAINTIFF PERTAINING or RELATING to the obtaining of employment by YOU as defined by Labor Code section 432.
  4. Any and all DOCUMENTS PERTAINING or RELATING to any contracts and/or agreements RELATING to PLAINTIFF's employment, including but not limited to any and all DOCUMENTS reflecting any termination of, modifications of, changes to, revisions to and/or drafts of any such alleged contracts or agreements RELATING or PERTAINING to PLAINTIFF's employment by YOU.

1       5.     The complete contents of any other file or files, other than the PERSONNEL FILE of  
2 PLAINTIFF PERTAINING, RELATING or referring to PLAINTIFF and/or to the terms and  
3 conditions of PLAINTIFF's employment by YOU.

4       6.     Any and all DOCUMENTS showing or describing all position(s) held by PLAINTIFF  
5 during her employment by YOU.

6       7.     Any and all DOCUMENTS showing, describing, explaining, PERTAINING to or  
7 RELATING to PLAINTIFF's job duties in every position she held while employed by YOU.

8       8.     Any and all DOCUMENTS showing, describing, PERTAINING to or RELATING to  
9 the wages and/or other forms of compensation earned by PLAINTIFF during PLAINTIFF's  
10 employment by YOU, including but not limited to wages, bonuses, stock options, deferred  
11 compensation, pension benefits, retirement plans, medical or other insurance, etc.

12      9.     Any and all DOCUMENTS, including but not limited to organizational charts or  
13 graphs, showing, describing, explaining, PERTAINING or RELATING to or reflecting  
14 PLAINTIFF's position(s) while employed by YOU in the last four (4) years before PLAINTIFF's  
15 TERMINATION, including but not limited to those showing or explaining the chain of authority or  
16 command above and below PLAINTIFF.

17      10.    Any and all DOCUMENTS used, considered, reviewed, read or relied upon in  
18 deciding to TERMINATE PLAINTIFF's employment.

19      11.    Any and all DOCUMENTS showing, depicting, reflecting, PERTAINING or  
20 RELATING to the reasons that PLAINTIFF was TERMINATED.

21      12.    Any and all DOCUMENTS reviewed, read, referred to or consulted by any person  
22 who had any input into or provided any information upon which the decision to TERMINATE  
23 PLAINTIFF was based.

1           13. Any and all DOCUMENTS showing, depicting, listing, PERTAINING or  
2 RELATING to who made or participated in the decision to TERMINATE PLAINTIFF's  
3 employment.

4           14. All DOCUMENTS IDENTIFIED in YOUR response to PLAINTIFF's first set of  
5 form interrogatories.

6           15. All DOCUMENTS IDENTIFIED in YOUR response to PLAINTIFF's first set of  
7 form interrogatories – employment law.

8           16. All DOCUMENTS IDENTIFIED in YOUR response to PLAINTIFF's first set of  
9 special interrogatories.

10          17. Any and all DOCUMENTS pertaining to any investigation(s) into the allegations  
11 made by PLAINTIFF in the COMPLAINT, including but not limited to written statements of  
12 witnesses, notes of interviews with witnesses, tape recordings of any and all oral statements and/or  
13 interview of witnesses, transcriptions of any tape recordings of any and all oral statements and/or  
14 interview of witnesses, reports regarding the results of any and all investigations and/or  
15 correspondence PERTAINING to the allegations contained in the COMPLAINT.

16          18. All DOCUMENTS that reflect or relate to any statements made by any PERSON  
17 relating to any of the allegations contained in PLAINTIFF's COMPLAINT, including but not limited  
18 to written statements, notes of interviews, tape recordings of any and all oral statements and/or  
19 interviews; transcriptions of any tape recordings of any and all oral statements and/or interviews;  
20 reports regarding the results of any and all interviews or investigations; or correspondence relating to  
21 the allegations contained in the COMPLAINT.

22          19. All DOCUMENTS that support any affirmative, defense YOU have pleaded or will  
23 plead in this action.

1           20. All DOCUMENTS that summarize, constitute, memorialize, discuss, mention,  
2 comment upon or otherwise refer to any communication between YOU and any state or federal  
3 governmental entity, including but not limited to the National Labor Relations Board, the Labor and  
4 Workforce Development Agency, the Division of Labor Standards and Enforcement, the  
5 Employment Development Department, the United States Equal Employment Opportunity  
6 Commission, and the California Department of Fair Employment and Housing, regarding  
7 PLAINTIFF and/or any allegations of the COMPLAINT.

8  
9           21. Any and all DOCUMENTS, including but not limited to memoranda, handwritten  
10 notes, letters, correspondence, policies, and policy numbers pertaining to insurance policies which  
11 may cover YOU for damages and/or defense costs related to this action.

12  
13          22. Any and all DOCUMENTS, including press releases, PERTAINING or RELATING  
14 to the launching of Engage 360.

15  
16          23. The Long Term Energy Efficiency Strategic Plan adopted by the California Public  
17 Utilities Commission on or around September 18, 2008.

18  
19          24. Any and all advertising or promotional DOCUMENTS RELATING or  
20 PERTAINING to the Engage 360 campaign.

21  
22          25. Any and all DOCUMENTS, including contracts or agreements, between YOU and  
23 the any California public entity PERTAINING or RELATING to the Engage 360 campaign.

24  
25          26. Any and all DOCUMENTS RELATING to the funding available to hire personnel for  
26 the Engage 360 campaign.

27  
28          27. Any and all DOCUMENTS RELATING or PERTAINING to the total combined  
marketing budget for the Engage 360 campaign.

1       28. Any and all DOCUMENTS RELATING to or showing the anticipated length of the  
2 Engage 360 campaign as of the date of PLAINTIFF's hire.

3       29. Any and all DOCUMENTS RELATING to the anticipated duration of the Engage  
4 360 campaign.

5       30. Any and all DOCUMENTS RELATING to the Engage 360 campaign, including but  
6 not limited to DOCUMENTS showing or RELATING to the description of the Engage 360  
7 campaign, its purpose, its funding and its anticipated length or duration.

8       31. Any and all DOCUMENTS of any kind showing, depicting or RELATING to  
9 PLAINTIFF's job duties as of the date of TERMINATION.

10      32. Any and all DOCUMENTS of any kind showing, depicting or RELATING to Sarah  
11 Davis's job duties from the time hired by YOU to the present.

12      33. Any and all DOCUMENTS of any kind showing, depicting or RELATING to  
13 Jackson Taylor's job duties from the time hired by YOU to the present.

14      34. Any and all DOCUMENTS of any kind showing, depicting or RELATING Justin  
15 Calhoun's job duties from the time hired by YOU to the present.

16      35. Any and all DOCUMENTS of any kind showing, depicting or RELATING to Jen  
17 Sokol's job duties from the time hired by YOU to the present.

18      36. Any and all electronic mail sent to or received by Sarah Davis while employed by  
19 YOU RELATING or PERTAINING to PLAINTIFF.

20      37. Any and all electronic mail sent to or received by Jackson Taylor while employed by  
21 YOU RELATING or PERTAINING to PLAINTIFF.

22      38. Any and all electronic mail sent to or received by Justin Calhoun while employed by  
23 YOU RELATING or PERTAINING to PLAINTIFF.

1       39. Any and all electronic mail sent to or received by Jen Sokol while employed by  
2 YOU RELATING or PERTAINING to PLAINTIFF.

3       40. Any and all electronic mail sent to or received by Sarah Davis while employed by  
4 YOU RELATING or PERTAINING to the Engage 360 campaign.

5       41. Any and all electronic mail sent to or received by Jackson Taylor while employed by  
6 YOU RELATING or PERTAINING to the Engage 360 campaign.

7       42. Any and all electronic mail sent to or received by Justin Calhoun while employed by  
8 YOU RELATING or PERTAINING to the Engage 360 campaign.

9       43. Any and all electronic mail sent to or received by Jen Sokol while employed by  
10 YOU RELATING or PERTAINING to the Engage 360 campaign.

11       44. Any and all electronic mail RELATING or PERTAINING to the allegations in  
12 PLAINTIFF's COMPLAINT, including any affirmative defenses you may plead.

13       45. Any and all DOCUMENTS RELATING or PERTAINING to any negotiation with  
14 PLAINTIFF or anyone acting on PLAINTIFF's behalf RELATING to YOUR hiring of PLAINTIFF.

15       46. Any and all DOCUMENTS RELATING or PERTAINING to the terms and  
16 conditions of PLAINTIFF's employment when he was hired by YOU.

17       47. Any and all DOCUMENTS RELATING or PERTAINING to any and all changes to  
18 the terms and conditions of PLAINTIFF's employment with YOU that occurred during his  
19 employment with YOU.

20       48. Any and all DOCUMENTS RELATING OR PERTAINING to, or describing, any  
21 compensation YOUR employees would receive for recruiting Community Managers or Assistant  
22 Community Managers for the Engage 360 campaign.

1       49. Any and all DOCUMENTS, including job postings or requisitions, RELATING OR  
2 PERTAINING to the recruiting of prospective or potential employees for the Engage 360 campaign,  
3 including but not limited to the recruitment of Community Managers or Assistant Community  
4 Managers.  
5

6       50. Any and all DOCUMENTS showing, depicting, reflecting, PERTAINING or  
7 RELATING to the reasons that the Engage 360 campaign was terminated.

8       51. Any and all DOCUMENTS, including but not limited to letters and electronic mail,  
9 sent by YOU (or by anyone acting on YOUR behalf) to PLAINTIFF from January 1, 2010 through  
10 present.  
11

12       52. Any and all DOCUMENTS that IDENTIFY all individuals who were  
13 TERMINATED by YOU due to lack of funding because the Engage 360 campaign was terminated.

14       52. Any and all DOCUMENTS showing, describing, stating, or explaining that the  
15 Engage 360 campaign was fully funded.  
16

17       53. Any and all DOCUMENTS RELATING or PERTAINING the restructuring of the  
18 Engage 360 campaign.

19       54. Any and all DOCUMENTS, including purchase orders, from any California  
20 public entity to you RELATING or PERTAINING to the Engage 360 campaign.

21       55. Any and all payroll records or other similar DOCUMENTS RELATING or  
22 PERTAINING to PLAINTIFF during PLAINTIFF's employment by YOU.  
23

24       56. Any and all DOCUMENTS RELATING to any and all claims for unemployment  
25 insurance or disability benefits compensation made by PLAINTIFF in connection with PLAINTIFF's  
26 employment by YOU.  
27

28

1       57. Any and all DOCUMENTS RELATING or PERTAINING to any and all awards,  
2 honors or accolades received by PLAINTIFF while employed by YOU.

3       58. Any and all DOCUMENTS of any kind RELATING to, PERTAINING to or  
4 supporting any after-acquired evidence defense that YOU intend to or are asserting in this action.

5       59. Any and all DOCUMENTS RELATING to, showing or discussing the purpose or  
6 goals of the Engage 360 campaign.

7       60. Any and all social media postings regarding or RELATING to the Engage 360  
8 campaign.

9       61. Any and all DOCUMENTS of any kind RELATING to the funding of the Engage  
10 360 campaign.

11      DATED: November 15, 2012

The deRubertis Law Firm, PLC

12      By 

13      David M. deRubertis, Esq.

14      Tyler F. Clark, Esq.

15      Attorneys for Plaintiffs

16      Brendan McPhillips, Leonard Sharlet,

17      John Brushwood and Evan Franco



1 David M. deRubertis, State Bar No. 208709  
2 Tyler F. Clark, State Bar No. 258309  
3 The deRubertis Law Firm, PLC  
4 4219 Coldwater Canyon Avenue  
5 Studio City, California 91604  
Telephone: (818) 761-2322  
Facsimile: (818) 761-2323  
E-Mail: [David@deRubertisLaw.com](mailto:David@deRubertisLaw.com)  
E-Mail: [Tyler@deRubertisLaw.com](mailto:Tyler@deRubertisLaw.com)

6 Attorneys for Plaintiffs  
7 Brendan McPhillips, Leonard Sharlet,  
John Brushwood and Evan Franco

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SAN FRANCISCO**

10 BRENDAN McPHILLIPS, an individual,  
11 LEONARD SHARLET, an individual,  
12 JOHN BRUSHWOOD, an individual, and  
EVAN FRANCO, an individual.

Case No.: CGG-12-524135

13 Plaintiffs.

**SPECIAL INTERROGATORIES, SET  
ONE, PROPOUNDED BY PLAINTIFF  
EVAN FRANCO TO DEFENDANT  
DRAFTFCB, INC.; DECLARATION OF  
NECESSITY**

15 THE INTERPUBLIC GROUP OF  
COMPANIES, INC., a Delaware Corporation;  
16 DRAFTFCB, INC., a Delaware Corporation;  
and DOES 1 through 50, inclusive.

Complaint Filed: September 12, 2011  
Trial Date: None

### Defendants.

## **PROPOUNDING PARTY: EVAN FRANCO**

**RESPONDING PARTY: DEFENDANT DRAFTFCB, INC.**

**SET NUMBER:** ONE (1)

You are requested to answer the following interrogatories, separately, fully, in writing, and under oath, and serve a copy of said answers no later than thirty days from the date of service of this request. Please furnish all responsive information that is presently available to you.

**SPECIAL INTERROGATORY NO. 1: IDENTIFY** the person who has the most knowledge of the reasons that PLAINTIFF was TERMINATED ("IDENTIFY" or "IDENTIFYING" means: (a) with respect to an individual, state the person's name, job title at the time in question, employer and business address and telephone at the time in question, employer

1 and business address and telephone at the time in question and dates of employment (if an  
2 employee of YOURS), and current or last known employer, business address, and home address  
3 and telephone; (b) with respect to a company, state the name of the company, the place of  
4 incorporation of the company, and the address of the company's principal place of business; (c)  
5 with respect to a DOCUMENT, state the names of the author or creator and the addressee, the  
6 subject matter or title, the date of the DOCUMENT, its present location AND custodian, and, if  
7 the DOCUMENT is an insurance policy or cover note, the policy number or cover note number;  
8 (d) with respect to a meeting, state the date, location, and subject matter of the meeting, and  
9 IDENTIFY the participants in the meeting; (e) with respect to an insurance claim, or notice of  
10 potential claim, state the identity of the policyholder; and (g) with respect to a lawsuit, state the  
11 names of the parties, docket number, court, and the current status of the litigation. "PLAINTIFF"  
12 refers to, Evan Franco, a Plaintiff in this action. "TERMINATE," "TERMINATE," OR  
13 "TERMINATION" means the separation from employment by an employee of YOURS, whether  
14 the employee is fired, terminated, laid-off, voluntarily quits, mutually agrees with YOU to leave  
15 employment or any other end of the employment relationship).

16 **SPECIAL INTERROGATORY NO. 2:** IDENTIFY each and every person who had any  
17 input into or participated in any way in the decision to TERMINATE PLAINTIFF, including but  
18 not limited to those who made the actual decision and those who, directly or indirectly, supplied  
19 information to the decision-makers.

20 **SPECIAL INTERROGATORY NO. 3:** For each and every person who had any input  
21 into or participated in any way in the decision to TERMINATE PLAINTIFF, describe or explain  
22 that person's role in the decision to terminate PLAINTIFF, including but not limited to whether he  
23 or she made the decision to TERMINATE PLAINTIFF and/or supplied information upon which  
24 the TERMINATION decision was based.

25 **SPECIAL INTERROGATORY NO. 4:** IDENTIFY any and all DOCUMENTS  
26 reviewed, considered, used, read, or relied upon in the decision to TERMINATE PLAINTIFF  
27 ("DOCUMENT" means all originals, drafts and copies that differ in any way from the originals of  
28

1 all written, recorded or graphic matter, whether produced or reproduced by handwriting, magnetic  
2 recording, photograph, printing, tape, transcription of spoken language or other record of spoken  
3 language, typewriting, writing or any other means as defined in Evidence Code §250; and includes  
4 without limitation agreements, appointment books, bank statements, bills, books, business records,  
5 facsimiles, calendars, cards, checks, charts, computer printouts and tapes, correspondence, diaries,  
6 file cards, films, financial statements and reports, handwritten notes, including "post-it" or other  
7 type adhesive notes, invoices, journals, ledgers, letters, logs, memoranda, memorials in any form of  
8 telephone conversations, minutes, notes, notices, pamphlets, papers, pure orders, personnel records,  
9 receipts, recordings, reports, telegrams and any other pertinent information set forth in written  
10 language or any electronic representation thereof and any carbon or photostatic copies of such  
11 material, if you do not have control over or possession of the original. "DOCUMENT" also includes  
12 information stored by computer or on a computer disk, diskette, tape or card, as well as any  
13 electronic recording, tape recording, photograph, video, file, microfilm, microfiche, or similar  
14 recording of words, images, sounds, pictures, or information of any kind. "DOCUMENT" also  
15 includes any and all drafts of, and amendments, or supplements to, any of the foregoing, whether  
16 prepared by you or any other person, as well as copies of the DOCUMENT that differ from the copy  
17 being produced (e.g., a differing copy is one that contains handwritten notes, interlineation  
18 underlining, and the like.).

19                   **SPECIAL INTERROGATORY NO. 5:** State in full and complete detail all of the reasons  
20 that PLAINTIFF was TERMINATED.

21                   **SPECIAL INTERROGATORY NO. 6:** State in full and complete detail any and all facts  
22 known to YOU at the time of PLAINTIFF's TERMINATION upon which YOU based YOUR  
23 decision to TERMINATE PLAINTIFF's employment ("YOU" or "YOUR" as used herein shall  
24 mean the party to whom this discovery request is directed, and, if the party to whom this request is  
25 directed is an entity, it shall include any and all agents, officers, directors, employees, independent  
26 contractors or other representatives of the entity to whom this request is directed).

27  
28

1                   **SPECIAL INTERROGATORY NO. 7:** Describe in full and complete detail all of  
2 PLAINTIFF's job duties at the time of TERMINATION.

3                   **SPECIAL INTERROGATORY NO. 8:** Did YOU represent to PLAINTIFF in connection  
4 with his hiring or recruitment that Engage 360 was fully funded through at least the end of 2012?

5                   **SPECIAL INTERROGATORY NO. 9:** If YOU represented to PLAINTIFF in connection  
6 with his hiring or recruitment that Engage 360 was fully funded through at least the end of 2012,  
7 IDENTIFY each and every DOCUMENT RELATING or PERTAINING to that representation  
8 ("PERTAINING" and "RELATING," as used in this request, means evidencing, memorializing,  
9 referring, constituting, containing, discussing, describing, embodying, reflecting, identifying,  
10 mentioning, stating, or otherwise relating to in any way, in whole or in part, the subject matter  
11 referred to in this request.).

12                  **SPECIAL INTERROGATORY NO. 10:** If YOU represented to PLAINTIFF in  
13 connection with his hiring or recruitment that Engage 360 was fully funded through at least the end  
14 of 2012, IDENTIFY each and every person or individual employed by YOU that made such  
15 representation(s).

16                  **SPECIAL INTERROGATORY NO. 11:** If YOU represented to PLAINTIFF in connection  
17 with his hiring or recruitment that Engage 360 was fully funded through at least the end of 2012, state  
18 the date(s) on which such representation(s) was/were made.

19                  **SPECIAL INTERROGATORY NO. 12:** If YOU did not represent to PLAINTIFF in  
20 connection with his hiring or recruitment that Engage 360 was fully funded through at least the end  
21 of 2012, describe in full and complete detail all statement(s) or representation(s) that YOU did make  
22 to PLAINTIFF in connection with his hiring or recruitment regarding the funding for Engage 360.

23                  **SPECIAL INTERROGATORY NO. 13:** If YOU did not represent to PLAINTIFF in  
24 connection with his hiring or recruitment that Engage 360 was fully funded through at least the end  
25 of 2012, IDENTIFY each and every individual who made any statement(s) or representation(s) to  
26 PLAINTIFF in connection with his hiring or recruitment regarding the funding for Engage 360.

27  
28

1                   **SPECIAL INTERROGATORY NO. 14:** If YOU did not represent to PLAINTIFF in  
2 connection with his hiring or recruitment that Engage 360 was fully funded through at least the end  
3 of 2012, IDENTIFY each and every DOCUMENT RELATING to or describing any statement(s) or  
4 representation(s) made to PLAINTIFF in connection with his hiring or recruitment regarding the  
5 funding for Engage 360.

6                   **SPECIAL INTERROGATORY NO. 15:** For each and every statement(s) or  
7 representation(s) made to PLAINTIFF in connection with his hiring or recruitment regarding the  
8 funding for Engage 360, state the date(s) on which such statement(s) or representation(s) was/were  
9 made.

10                  **SPECIAL INTERROGATORY NO. 16:** If YOU did not represent to PLAINTIFF in  
11 connection with his hiring or recruitment that Engage 360 was fully funded through at least the end  
12 of 2012, describe in full and complete detail all statement(s) or representation(s) that YOU did make  
13 to PLAINTIFF in connection with his hiring or recruitment regarding the funding for Engage 360.

14                  **SPECIAL INTERROGATORY NO. 17:** If YOU did not represent to PLAINTIFF in  
15 connection with his hiring or recruitment that Engage 360 was fully funded through at least the end  
16 of 2012, please state in full and complete detail all statements or representations that YOU did make  
17 to PLAINTIFF in connection with his hiring or recruitment regarding the anticipated length of the  
18 Engage 360 campaign.

19                  **SPECIAL INTERROGATORY NO. 18:** If YOU did not represent to PLAINTIFF in  
20 connection with his hiring or recruitment that Engage 360 was fully funded through at least the end  
21 of 2012, IDENTIFY each and every individual who made any statement(s) or representation(s) to  
22 PLAINTIFF in connection with his hiring or recruitment regarding the anticipated length of the  
23 Engage 360 campaign.

24                  **SPECIAL INTERROGATORY NO. 19:** If YOU did not represent to PLAINTIFF in  
25 connection with his hiring or recruitment that Engage 360 was fully funded through at least the end  
26 of 2012, IDENTIFY each and every DOCUMENT RELATING to or describing any statement(s) or

27  
28

1 representation(s) made to PLAINTIFF in connection with his hiring or recruitment regarding the  
2 anticipated length of the Engage 360 campaign.

3 **SPECIAL INTERROGATORY NO. 20:** For each and every statement(s) or  
4 representation(s) made to PLAINTIFF in connection with his hiring or recruitment regarding the  
5 anticipated length of the Engage 360 campaign, state the date(s) on which such statement(s) or  
6 representation(s) was/were made.

7 **SPECIAL INTERROGATORY NO. 21:** IDENTIFY each and every person that was  
8 TERMINATED by YOU because Engage 360 lost funding.

9 **SPECIAL INTERROGATORY NO. 22:** IDENTIFY any and all DOCUMENTS  
10 reviewed, considered, used, read, or relied upon in the decision to TERMINATE any persons other  
11 than PLAINTIFF because Engage 360 lost funding.

12 **SPECIAL INTERROGATORY NO. 23:** IDENTIFY any and all DOCUMENTS that  
13 PERTAIN or RELATING to the funding of Engage 360.

14 **SPECIAL INTERROGATORY NO. 24:** IDENTIFY the person who has the most  
15 knowledge of Engage 360's funding.

16 **SPECIAL INTERROGATORY NO. 25:** IDENTIFY each and every one of PLAINTIFF's  
17 supervisors and/or managers during his employment with YOU.

18 **SPECIAL INTERROGATORY NO. 26:** Describe in full and complete detail each and  
19 every communication, whether written or oral, made by YOU to PLAINTIFF in which YOU  
20 criticized his work performance before his TERMINATION.

21 **SPECIAL INTERROGATORY NO. 27:** IDENTIFY all DOCUMENTS that show,  
22 reflect, RELATE or PERTAIN to any and all communications, whether written or oral, made by  
23 YOU to PLAINTIFF in which YOU criticized his work performance before his TERMINATION.

24 **SPECIAL INTERROGATORY NO. 28:** State PLAINTIFF's monthly earnings while  
25 employed by YOU by date and amount.

26 **SPECIAL INTERROGATORY NO. 29:** State PLAINTIFF's annual earnings while he  
27 was employed by YOU.

28

1                   **SPECIAL INTERROGATORY NO. 30:** Describe (including by describing the value to  
2 PLAINTIFF or the cost to YOU) each form of non-wage compensation or fringe benefit that  
3 PLAINTIFF was entitled to receive or did receive while employed by YOU, including but not  
4 limited to health or other insurance, stock options, bonuses, deferred compensation, retirement  
5 benefits or other forms of non-wage compensation during his employment with you.

6                   **SPECIAL INTERROGATORY NO. 31:** State each job position PLAINTIFF held while  
7 employed by YOU.

8                   **SPECIAL INTERROGATORY NO. 32:** For each job position that PLAINTIFF held while  
9 employed by YOU, state the date(s) on which PLAINTIFF held the position.

10                  **SPECIAL INTERROGATORY NO. 33:** Describe in full and complete detail the job  
11 duties of Sarah Davis in effect in 2011 to present.

12                  **SPECIAL INTERROGATORY NO. 34:** Describe in full and complete detail the job  
13 duties of Jackson Taylor in effect in 2011 to present.

14                  **SPECIAL INTERROGATORY NO. 35:** Describe in full and complete detail the job  
15 duties of Jen Sokol in effect in 2011 to present.

16                  **SPECIAL INTERROGATORY NO. 36:** Describe in full and complete detail the job  
17 duties of Justin Calhoun in effect in 2011 to present.

18                  **SPECIAL INTERROGATORY NO. 37:** IDENTIFY each and every person who  
19 participated in the hiring or recruitment of PLAINTIFF.

20                  **SPECIAL INTERROGATORY NO. 38:** For each and every person who participated  
21 in the hiring or recruitment of PLAINTIFF, describe or explain that persons role in hiring or  
22 recruitment of PLAINTIFF.

23                  **SPECIAL INTERROGATORY NO. 39:** IDENTIFY any and all DOCUMENTS  
24 reviewed, considered, used, or relied upon in the decision to hire or recruit PLAINTIFF.

25                  **SPECIAL INTERROGATORY NO. 40:** State in full and complete detail any and all  
26 representation(s) made by YOU to PLAINTIFF PERTAINING or RELATING to his employment  
27 with YOU during the hiring or recruitment process.

28

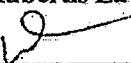
1                   **SPECIAL INTERROGATORY NO. 41:** IDENTIFY each and every person who made any  
2 representation(s) to PLAINTIFF PERTAINING or RELATING to his employment with YOU during  
3 the hiring or recruitment process.

4                   **SPECIAL INTERROGATORY NO. 42:** IDENTIFY each and every DOCUMENT that  
5 describes, summarizes, constitutes or RELATES to any representation(s) YOU made to PLAINTIFF  
6 RELATING to his employment with YOU during the hiring or recruitment process.

7                   **SPECIAL INTERROGATORY NO. 43:** For each and every representation(s) made to  
8 PLAINTIFF by YOU or on YOUR behalf to PLAINTIFF PERTAINING or RELATING to his  
9 employment with YOU during the hiring or recruitment process, state the date(s) on which such  
10 representation(s) were/was made.

11  
12 DATED: November 15, 2012.

The deRubertis Law Firm, PLC

13 By 

14                   David M. deRubertis, Esq.  
15                   Tyler F. Clark, Esq.  
16                   Attorneys for Plaintiffs  
17                   Brendan McPhillips, Leonard Sharlet,  
18                   John Brushwood and Evan Franco

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1                   **DECLARATION OF DAVID M. DERUBERTIS, ESQ.:**

2     I, David M. deRubertis, Esq., hereby declare as follows:

3     1.     I am an attorney at the deRubertis Law Firm, PLC, an attorneys of record for Evan  
4     Franco, a plaintiff in this action.

5     2.     I am propounding to Defendant DraftFCB, Inc. the attached set of specially  
6     interrogatories.

7     3.     This set of interrogatories will cause the total number of special interrogatories  
8     propounded to the party to whom they are directed to exceed the number of requests permitted by  
9     Section 2030.030 of the Code of Civil Procedure.

10    4.     I have previously propounded a total of zero (0) special interrogatories to this party.

11    5.     This set of special interrogatories contains a total of forty three (43)  
12     special interrogatories.

13    6.     I am familiar with the issues and the previous discovery conducted by all the parties  
14     in this case.

15    7.     I have personally examined each of the questions in this set of interrogatories.

16    8.     This number of questions is warranted under Section 2030.040 of the Code of Civil  
17     Procedure because of the complexity and the quantity of the existing and potential issues in this case,  
18     and the expedience of using this method of discovery to provide the responding party the opportunity  
19     to conduct an inquiry, investigation, or search of files or records to supply the information sought.  
20     Furthermore, the Complaint alleges numerous acts against the Defendant, as well as issues of the  
21     Defendant's liability for the acts of another. Plus, Defendants will raise numerous affirmative  
22     defenses. This procedure is more expeditious than alternative methods of seeking this  
23     information.

24    9.     None of the Requests is being propounded for any improper purpose, such as to  
25     harass the party, or the attorney for the party, to whom it is directed, or to cause unnecessary delay or  
26     needless increase in the cost of litigation.

1 I declare under the penalty of perjury under the laws of California that the foregoing is true  
2 and correct and that this declaration was executed on November 15, 2012.  
3  
4   
5 David M. deRubertis, Esq.  
6 Déclarant  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



DISC-002

<b>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):</b> David M. deRubertis (SBN 208709) Tyler F. Clark (SBN 258309) <b>The deRubertis Law Firm, PLC</b> 4219 Coldwater Canyon Avenue Studio City, California 91604 TELEPHONE NO: (818)761-2322      FAX NO. (Optional): (818)761-2323 <b>E-MAIL ADDRESS (Optional):</b> David@deRubertisLaw.com <b>ATTORNEY FOR (Name):</b> Plaintiff's Brendan McPhillips, et al.	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF:</b> San Francisco Civic Center Courthouse 400 McAllister Street San Francisco, California 94102	
<b>SHORT TITLE:</b> BRENDAN McPHILLIPS, et al. v. THE INTERPUBLIC GROUP OF COMPANIES, INC., et al.	
<b>FORM INTERROGATORIES – EMPLOYMENT LAW</b> <b>Asking Party:</b> EVAN FRANCO <b>Answering Party:</b> DRAFTFCB, INC. <b>Set No.:</b> One (1)	
<b>CASE NUMBER:</b> CGG-12-524135	

**Sec. 1. Instructions to All Parties**

- (a) Interrogatories are written questions prepared by a party to an action that are sent to any other party in the action to be answered under oath. The interrogatories below are form interrogatories approved for use in employment cases.
- (b) For time limitations, requirements for service on other parties, and other details, see Code of Civil Procedure sections 2030.010–2030.410 and the cases construing those sections.
- (c) These form interrogatories do not change existing law relating to interrogatories nor do they affect an answering party's right to assert any privilege or make any objection.

**Sec. 2. Instructions to the Asking Party**

- (a) These form interrogatories are designed for optional use by parties in employment cases. (Separate sets of interrogatories, *Form Interrogatories—General* (form DISC-001) and *Form Interrogatories—Limited Civil Cases (Economic Litigation)* (form DISC-004) may also be used where applicable in employment cases.)
- (b) Insert the names of the EMPLOYEE and EMPLOYER to whom these interrogatories apply in the definitions in sections 4(d) and (e) below.
- (c) Check the box next to each interrogatory that you want the answering party to answer. Use care in choosing those interrogatories that are applicable to the case.
- (d) The interrogatories in section 211.0, Loss of Income Interrogatories to Employer, should not be used, until the employer has had a reasonable opportunity to conduct an investigation or discovery of the employee's injuries and damages.
- (e) Additional interrogatories may be attached.

**Sec. 3. Instructions to the Answering Party**

- (a) You must answer or provide another appropriate response to each interrogatory that has been checked below.
- (b) As a general rule, within 30 days after you are served with these interrogatories, you must serve your responses on the asking party and serve copies of your responses on all other parties to the action who have appeared. See Code of Civil Procedure sections 2030.260–2030.270 for details.

- (c) Each answer must be as complete and straightforward as the information reasonably available to you permits. If an interrogatory cannot be answered completely, answer it to the extent possible.
- (d) If you do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable and good faith effort to get the information by asking other persons or organizations, unless the information is equally available to the asking party.
- (e) Whenever an interrogatory may be answered by referring to a document, the document may be attached as an exhibit to the response and referred to in the response. If the document has more than one page, refer to the page and section where the answer to the interrogatory can be found.
- (f) Whenever an address and telephone number for the same person are requested in more than one interrogatory, you are required to furnish them in answering only the first interrogatory asking for that information.
- (g) If you are asserting a privilege or making an objection to an interrogatory, you must specifically assert the privilege or state the objection in your written response.
- (h) Your answers to these interrogatories must be verified, dated, and signed. You may wish to use the following form at the end of your answers:  
*I declare under penalty of perjury under the laws of the State of California that the foregoing answers are true and correct.*

(DATE)

(SIGNATURE)

**Sec. 4. Definitions**

Words in **BOLDFACE CAPITALS** in these interrogatories are defined as follows:

- (a) **PERSON** includes a natural person, firm, association, organization, partnership, business, trust, limited liability company; corporation, or public entity.

DISC-002

- (b) **YOU OR ANYONE ACTING ON YOUR BEHALF** includes you, your agents, your employees, your insurance companies, their agents, their employees, your attorneys, your accountants, your investigators, and anyone else acting on your behalf.
- (c) **EMPLOYMENT** means a relationship in which an **EMPLOYEE** provides services requested by or on behalf of an **EMPLOYER**, other than an independent contractor relationship.
- (d) **EMPLOYEE** means a **PERSON** who provides services in an **EMPLOYMENT** relationship and who is a party to this lawsuit. For purposes of these interrogatories, **EMPLOYEE** refers to (insert name):

*(If no name is inserted, **EMPLOYEE** means all such **PERSONS**.)*

- (e) **EMPLOYER** means a **PERSON** who employs an **EMPLOYEE** to provide services in an **EMPLOYMENT** relationship and who is a party to this lawsuit. For purposes of these interrogatories, **EMPLOYER** refers to (insert name):

*(If no name is inserted, **EMPLOYER** means all such **PERSONS**.)*

- (f) **ADVERSE EMPLOYMENT ACTION** means any **TERMINATION**, suspension, demotion, reprimand, loss of pay, failure or refusal to hire, failure or refusal to promote, or other action or failure to act that adversely affects the **EMPLOYEE'S** rights or interests and which is alleged in the **PLEADINGS**.
- (g) **TERMINATION** means the actual or constructive termination of employment and includes a discharge, firing, layoff, resignation, or completion of the term of the employment agreement.
- (h) **PUBLISH** means to communicate orally or in writing to anyone other than the plaintiff. This includes communications by one of the defendant's employees to others. (*Kelly v. General Telephone Co.* (1982) 136 Cal.App.3d 278, 284.)
- (i) **PLEADINGS** means the original or most recent amended version of any complaint, answer, cross-complaint, or answer to cross-complaint.
- (j) **BENEFIT** means any benefit from an **EMPLOYER**, including an "employee welfare benefit plan" or "employee pension benefit plan" within the meaning of Title 29 United States Code section 1002(1) or (2) or ERISA.
- (k) **HEALTH CARE PROVIDER** includes any **PERSON** referred to in Code of Civil Procedure section 667.7(e)(3).
- (l) **DOCUMENT** means a writing, as defined in Evidence Code section 250, and includes the original or a copy of handwriting, typewriting, printing, photostats, photographs, electronically stored information, and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds, or symbols, or combinations of them.
- (m) **ADDRESS** means the street address, including the city, state, and zip code.

## Sec. 5. Interrogatories

The following interrogatories for employment law cases have been approved by the Judicial Council under Code of Civil Procedure section 2033.710:

### CONTENTS

- 200.0 Contract Formation
- 201.0 Adverse Employment Action
- 202.0 Discrimination Interrogatories to Employee
- 203.0 Harassment Interrogatories to Employee
- 204.0 Disability Discrimination
- 205.0 Discharge in Violation of Public Policy
- 206.0 Defamation
- 207.0 Internal Complaints
- 208.0 Governmental Complaints
- 209.0 Other Employment Claims by Employee or Against Employer
- 210.0 Loss of income Interrogatories to Employee
- 211.0 Loss of income Interrogatories to Employer
- 212.0 Physical, Mental, or Emotional Injuries—Interrogatories to Employee
- 213.0 Other Damages Interrogatories to Employee
- 214.0 Insurance
- 215.0 Investigation
- 216.0 Denials and Special or Affirmative Defenses
- 217.0 Response to Request for Admissions

### 200.0 Contract Formation

- 200.1 Do you contend that the **EMPLOYMENT** relationship was at "at will"? If so:
  - (a) state all facts upon which you base this contention;
  - (b) state the name, ADDRESS, and telephone number of each **PERSON** who has knowledge of those facts; and
  - (c) identify all **DOCUMENTS** that support your contention.
- 200.2 Do you contend that the **EMPLOYMENT** relationship was not "at will"? If so:
  - (a) state all facts upon which you base this contention;
  - (b) state the name, ADDRESS, and telephone number of each **PERSON** who has knowledge of those facts; and
  - (c) identify all **DOCUMENTS** that support your contention.
- 200.3 Do you contend that the **EMPLOYMENT** relationship was governed by any agreement—written, oral, or implied? If so:
  - (a) state all facts upon which you base this contention;
  - (b) state the name, ADDRESS, and telephone number of each **PERSON** who has knowledge of those facts; and
  - (c) identify all **DOCUMENTS** that support your contention.

DISC-002

- 200.4 Was any part of the parties' **EMPLOYMENT** relationship governed in whole or in part by any written rules, guidelines, policies, or procedures established by the **EMPLOYER**? If so, for each **DOCUMENT** containing the written rules, guidelines, policies, or procedures:
- (a) state the date and title of the **DOCUMENT** and a general description of its contents;
  - (b) state the manner in which the **DOCUMENT** was communicated to employees; and
  - (c) state the manner, if any, in which employees acknowledged either receipt of the **DOCUMENT** or knowledge of its contents.
- 200.5 Was any part of the parties' **EMPLOYMENT** relationship covered by one or more collective bargaining agreements or memorandums of understanding between the **EMPLOYER** (or an association of employers) and any labor union or employee association? If so, for each collective bargaining agreement or memorandum of understanding, state:
- (a) the names and **ADDRESSES** of the parties to the collective bargaining agreement or memorandum of understanding;
  - (b) the beginning and ending dates, if applicable, of the collective bargaining agreement or memorandum of understanding; and
  - (c) which parts of the collective bargaining agreement or memorandum of understanding, if any, govern (1) any dispute or claim referred to in the **PLEADINGS** and (2) the rules or procedures for resolving any dispute or claim referred to in the **PLEADINGS**.
- 200.6 Do you contend that the **EMPLOYEE** and the **EMPLOYER** were in a business relationship other than an **EMPLOYMENT** relationship? If so, for each relationship:
- (a) state the names of the parties to the relationship;
  - (b) identify the relationship; and
  - (c) state all facts upon which you base your contention that the parties were in a relationship other than an **EMPLOYMENT** relationship.
- 201.0 Adverse Employment Action**
- 201.1 Was the **EMPLOYEE** involved in a **TERMINATION**? If so:
- (a) state all reasons for the **EMPLOYEE'S TERMINATION**;
  - (b) state the name, **ADDRESS**, and telephone number of each **PERSON** who participated in the **TERMINATION** decision;
  - (c) state the name, **ADDRESS**, and telephone number of each **PERSON** who provided any information relied upon in the **TERMINATION** decision; and
  - (d) identify all **DOCUMENTS** relied upon in the **TERMINATION** decision.
- 201.2 Are there any facts that would support the **EMPLOYEE'S TERMINATION** that were first discovered after the **TERMINATION**? If so:
- (a) state the specific facts;
  - (b) state when and how **EMPLOYER** first learned of each specific fact;
  - (c) state the name, **ADDRESS**, and telephone number of each **PERSON** who has knowledge of the specific facts; and
  - (d) identify all **DOCUMENTS** that evidence these specific facts.
- 201.3 Were there any other **ADVERSE EMPLOYMENT ACTIONS**, including (*the asking party should list the ADVERSE EMPLOYMENT ACTIONS*):
- If so, for each action, provide the following:
- (a) all reasons for each **ADVERSE EMPLOYMENT ACTION**;
  - (b) the name, **ADDRESS**, and telephone number of each **PERSON** who participated in making each **ADVERSE EMPLOYMENT ACTION** decision;
  - (c) the name, **ADDRESS**, and telephone number of each **PERSON** who provided any information relied upon in making each **ADVERSE EMPLOYMENT ACTION** decision; and
  - (d) the identity of all **DOCUMENTS** relied upon in making each **ADVERSE EMPLOYMENT ACTION** decision.
- 201.4 Was the **TERMINATION** or any other **ADVERSE EMPLOYMENT ACTIONS** referred to in Interrogatories 201.1 through 201.3 based in whole or in part on the **EMPLOYEE'S** job performance? If so, for each action:
- (a) identify the **ADVERSE EMPLOYMENT ACTION**;
  - (b) identify the **EMPLOYEE'S** specific job performance that played a role in that **ADVERSE EMPLOYMENT ACTION**;
  - (c) identify any rules, guidelines, policies, or procedures that were used to evaluate the **EMPLOYEE'S** specific job performance;
  - (d) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who had responsibility for evaluating the specific job performance of the **EMPLOYEE**;
  - (e) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the **EMPLOYEE'S** specific job performance that played a role in that **ADVERSE EMPLOYMENT ACTION**; and
  - (f) describe all warnings given with respect to the **EMPLOYEE'S** specific job performance.